

THE QUESTION OF 'INDIAN PENETRATION' IN THE
DURBAN AREA AND INDIAN POLITICS : 1940-1946

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Finally, in compliance with the regulations of the University of Natal, I declare that this whole thesis is, unless specifically indicated to the contrary in the text, my own original work.

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DOWLAT RAMDAS BAGWANDEEN

LIST OF ABBREVIATIONS USED

A.N.C.	:	AFRICAN NATIONAL CONGRESS
A.S.C.	:	ANTI-SEGREGATION COUNCIL
D.C.C.	:	DURBAN CITY COUNCIL
I.A.P.	:	IN AUTHOR'S PERSONAL POSSESSION
I.P.C.	:	INDIAN PENETRATION COMMISSION
K.C.L.	:	KILLIE CAMPBELL AFRICANA LIBRARY, DURBAN
N.A.	:	NATAL ARCHIVES DEPOT, PIETERMARITZBURG
N.I.A.	:	NATAL INDIAN ASSOCIATION
N.I.C.	:	NATAL INDIAN CONGRESS
N.M.A.	:	NATAL MUNICIPAL ASSOCIATION
S.A.I.C.	:	SOUTH AFRICAN INDIAN CONGRESS
S.A.I.R.R.	:	SOUTH AFRICAN INSTITUTE OF RACE RELATIONS
T.A.	:	TRANSVAAL ARCHIVES DEPOT, PRETORIA
T.C.O.	:	TOWN CLERK'S OFFICE, DURBAN
UNO	:	UNITED NATIONS ORGANISATION
W.C.L.	:	WILLIAM CULLEN LIBRARY, UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG.

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INTRODUCTION

During the nineteenth century, the demand in Natal for labour by the sugar, tea and wattle plantations, the railways and the mines led to the introduction of Indians into South Africa. They came as indentured labourers and were soon followed by Indian traders who first supplied the needs of their country-men and later extended their activities to other groups and other provinces.¹ Within three generations by 1946 the Indian population was approximately 282 000.² The Indian Government had demanded and received unambiguous assurances that the Indian indentured immigrants would receive fair and equal treatment when their indentureship expired. Lord Salisbury, Secretary of State for India, had declared in 1875 that 'they would be in all respects free men with privileges no whit inferior to any other class of Her Majesty's subjects resident in the Colonies.'³ But this pledge was not honoured in Natal.

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1. L.Kuper et al., Durban: A Study in Racial Ecology (London, Jonathan Cape, 1958), 25.
 2. W.K.Hancock, Smuts: The Fields of Force: 1919-1950 (Cambridge, Cambridge University Press, 1968), f/n., 451. In 1946 the figures were: Natal, 228 000; Transvaal, 37 000; Cape Province, 16 900; Orange Free State, 14; of the Natal Indians, 113 400 were in Durban where the White population numbered 124 492; see also, M.H. Alsop, The Population of Natal (Cape Town, Oxford University Press, Natal Regional Survey, Vol.2, 1952).
 Note: In order to avoid anachronism and not because of insensitivity or disrespect the contemporary terminology used to refer to the racial groups has been utilised where necessary. The terms European and White; Black, African and Native; and, Indian and Asiatic are often used synonymously.
 3. W.K.Hancock, Smuts: The Sanguine Years: 1870-1919 (Cambridge, Cambridge University Press, 1962), 325.

Indian immigration to Natal came to be characterised by the idea that Indians were acceptable so long as they remained as mere labourers.⁴

When the indentured immigrant had served the period of his contract he became a 'free' Indian and either settled on the land as a market gardener or turned to trade. The 'free' Indian together with other Indian immigrants who had come to Natal of their own accord as 'passenger' Indians, came to be feared as economic competitors by the Whites.⁵ The economic success of the Indians 'was perhaps the sharpest thorn in the flesh of the European.'⁶ With the gradual improvement in the standard of living, education and so forth, the Indian community also began to vie with the Europeans for democratic rights and privileges.

Such demands and fears marked the genesis of the discord between Indians and Europeans. In considering a conceptual framework for our study we may argue briefly that: to the extent that Whites wished to retain political power, their prejudice towards Indians caused Indo-European relations to escalate into a racial struggle. The

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4. A.D.Lazarus, 'Racial Determinants of an Immigrant Group (A Study of the Indians in South Africa' (Yale University, Unpublished M.A. thesis, 1938), i; see also, C. Kondapi, Indians Overseas, 1838-1949 (New Delhi, Oxford University Press, 1951), 7; G.H. Calpin, Indians in South Africa (Pietermaritzburg, Shuter and Shooter, 1949), 17; G.H. Calpin (Ed.), The South African Way of Life: Values and Ideals of a Multi-Racial Society (London, William Heinemann Ltd., 1953), 79; H.Kuper, Indian People in Natal (Pietermaritzburg, University of Natal Press, 1960), 4; F.N.Ginwala, 'Class, Consciousness and Control - Indian South Africans 1860-1946' (University of Oxford, Unpublished D.Phil. thesis, 1974), 41, f/n.1, quoting The Natal Witness, 8.1.1885, where the reason for the introduction of indentured labourers was seen as being similar to that of bringing in mules from Montevideo, oxen from Madagascar or sugar machinery from Glasgow.
 5. See, ibid., 35-37, for other reasons.
 6. Calpin, Indians in South Africa, 17; see also, J.Burger, The Black Man's Burden (London, Victor Gollancz Ltd., 1943), 35; C. Harmsworth, Pleasure and Problem in South Africa (London, John Lane, n.d.), 184.

overwhelming majority of Europeans considered it axiomatic that political control must be vested in their hands for all times.⁷ Legislation was consequently promulgated which systematically eroded the rights of the Indian community⁸ as characterised by segregation barriers, denial of social equality, deprivation of the franchise and so on.⁹ In the same way Whites wanted to be the economically advantaged group. The economic competition offered by Indians led to the emergence of a class struggle between the two groups, in terms of Marxist philosophy.¹⁰ A third theoretical consideration is suggested by Thompson who maintains that the struggle in South Africa was that of a caste society since the dominant White group was wholly endogamous by law and the non-White groups almost wholly endogamous by custom.¹¹ There was no vertical mobility

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7. E.Hellman, In Defence of a Shared Society (Johannesburg, SAIRR, 1956), 7.
 8. H. Tinker, A New System of Slavery, The Export of Indian Labour Overseas, 1830-1920 (London, Oxford University Press, 1974), 377.
 9. See, O.C.Cox, Caste, Class, and Race: A Study in Social Dynamics (New York, Modern Reader Paperbacks, 1970), 364; see also, L. Kuper, 'Racialism and Integration in South African Society', Race, (1963), (4), 26-27.
 10. P. Calvert, The Concept of Class: An Historical Introduction (London, Hutchinson, 1982), 208.
 11. L.M.Thompson, Politics in the Republic of South Africa (Boston, Little, Brown and Company, 1966), 96; see, also F. Meer, Portrait of Indian South Africans (Durban, Avon House, 1969), Preface; R.F.A.Hoernlé, Race and Reason: Being mainly a Selection of Contributions to the Race Problem in South Africa (Johannesburg, Witwatersrand University Press, 1945), 145. Numerous sociological studies have been carried out on these concepts of Race, Class and Caste. See, inter alia, H. Adam, Modernizing Racial Domination: The Dynamics of South African Politics (Berkeley, University of California Press, 1971); E.P. Dvorin, Racial Separation in South Africa: An Analysis of Apartheid Theory (Chicago, The University of Chicago Press, 1952); B.M.Du Toit, 'Color, Class and Caste in South Africa', Journal of Asian and African Studies, (1966), (1), 197-212; G.C. Kinloch, The Dynamics of Race Relations: A Sociological Analysis (New York, Mc Graw-Hill Book Company, 1974); L.Kuper, An African Bourgeoisie: Race, Class, and Politics in South Africa (Newhaven, Yale University Press, 1965); P.L.van den Berghe, 'Towards a Sociology of Africa', in Africa: Social Problems of Change and Conflict (San Francisco, Chandler Publishing Company, 1965); M.Freedman, 'Some Recent Works on Race Relations', British Journal of Sociology, (1954), (5), 342-354.

from the non-White to the White group. These remain purely ideological arguments.¹² As the 'Indian penetration' issue was primarily socio-economic and Indian political development fundamentally a question of power, for our purpose it would be safe to assume that the Indo-European struggle was a class and racial struggle respectively. As the two groups remained socially apart we can ignore the concept of a caste struggle.

Since the Immigrants' Regulations Act of 1913 prevented the diaspora of Indians to other provinces of South Africa the majority of Indians were compelled to remain in Natal with the greatest concentration being in Durban. The adoption of western standards of living enjoined by the Cape Town Agreement of 1927,¹³ the break-up of the traditional joint family system and the natural increase in population led to the demand for housing by the Indian community. The reluctance on the part of the Durban City Council (D.C.C.) to fulfil its obligations in providing housing and civic amenities for the Indian community became the main issue towards which the whole conflict of interests between Indians and Europeans sharpened. The attempt made by Indians to acquire better quality homes in well serviced residential areas which invariably were to be found in predominantly European-occupied areas was condemned as 'Indian penetration'. These efforts were obstinately opposed by Europeans who demanded legislation to segregate Indians. The D.C.C. played the role of prime instigator for such a move.

12. See, D.S. Rajah, 'The Durban Indian Central Business District. A Case Study in the Geography of Apartheid' (University of Natal, Durban, Unpublished Ph.D. thesis, 1981), 12-13.

13. See below, Chapter Three, 106.

Although in practice Indians preferred to live amongst themselves, they were extremely sensitive to the 'stigma of segregation'.¹⁴ To them segregation was a question of 'izzat'¹⁵ and a 'humiliation of their race, and a dishonour to democracy.'¹⁶ The Indian political organisations directed their energies against the denigration of the dignity of the Indians by such legislation designed to segregate Indians. Lacking the political clout of the vote they could do no more than appeal to the authorities by means of memoranda, deputations, letters, petitions and anxious arguments. The initial policy of compromise and conciliation adopted by the merchant class amongst the Indian community for the protection in the main of their vested interests was replaced in the mid-1940s by a more militant demand for basic rights and privileges for the Indian community. This demand was made by the radical element in the community comprising young university trained professional men and women, trade union leaders and others who took over the leadership of the Indian political organisations.

14. T. Macdonald, Jan Hofmeyr: Heir to Smuts (Cape Town, Hurst and Blackett Ltd., 1948), 105.

This view was unequivocally emphasised in the Report of the First Broome Commission. See below, Chapter Three, 112, f/n. 145.

15. 'Izzat' referred to 'Honour'; see also below, Chapter One, 21, f/n. 36.

16. Calpin, Indians in South Africa, 126.

The early history of Indians in Natal has been fairly thoroughly covered in various theses and monographs.¹⁷ The post-1940 period has, however, been largely neglected. Some commentators have looked at certain themes or trends in Indian history during this period. Pachai, for instance, declares that his 'aim is not to deal with local, national

17. Some of these are:

H.M.Adamson, 'The Indian Question in South Africa, 1900-1914' (University of Cape Town, Unpublished M.A.thesis, 1932); J.E.Corbett, 'A Study of the Capetown Agreement' (University of Cape Town, Unpublished M.A. thesis, 1947); A.G.Choonoo, 'Indentured Indian Immigration into Natal, 1860-1911, with Particular Reference to its Role in the Development of the Natal Sugar Industry' (University of Natal, Durban, Unpublished M.A.thesis, 1967); Ginwala, 'Class, Consciousness and Control'; M. Mitha, 'Indian Minorities in South Africa' (UNISA, Unpublished M.A. thesis, 1968); B. Pachai, 'The History of the "Indian Opinion" 1903-1914', Archives Year Book for South African History, 1963; Z.A. Stein, 'A History of Indian Settlement in Natal from 1870-1893' (University of Cape Town, Unpublished M.A. thesis, 1942); L.M.Thompson, 'Indian Immigration into Natal, 1860-1872', Archives Year Book for South African History, 1952; M. Tayal, 'Gandhi: The South African Experience' (University of Oxford, Unpublished D.Phil. thesis, 1980); L. Witz, 'Indentured Indian Immigration into Natal, 1860-1885' (University of Natal, Durban, Unpublished B.A. (Hons) thesis, 1980); S.L.Kirk, 'The Wragg Commission - A Study of Economic and Social Factors' (University of Natal, Durban, Unpublished B.A. (Hons) thesis, 1980); D.A.van Zyl, 'Gandhi in Natal: From Organised Opposition to Mass Civil Disobedience' (University of Natal, Durban, Unpublished B.A. (Hons) thesis, 1980); I. Narain, The Politics of Racialism: A Study of the Indian Minority in South Africa down to the Gandhi-Smuts Agreement (Agra, Shiv Lal Agarwala and Co. (P.)Ltd., First Edition, 1962); F. Meer, Portrait of Indian South Africans; B. Pachai, The International Aspects of the South African Indian Question, 1860-1971 (Cape Town, C. Struik (Pty.)Ltd., 1971); M. Palmer, The History of the Indians in Natal (Cape Town, Oxford University Press, Natal Regional Survey, Vol. 10, 1957); P.S.Joshi, The Tyranny of Colour: A Study of the Indian Problem in South Africa (Durban, Author, 1942).

or domestic issues at length...' ¹⁸ as he wishes to emphasise the international aspects. Swanson criticises Pachai for a lack of 'interpretative sweep' describing the work as a 'chronicle' rather than a 'history'. ¹⁹ Because of the wide period covered in his study, Pachai has not analysed in detail the events of 1940-1946 relevant to Indian history in South Africa.

X Ginwala has dealt with Indian history from 1860-1946 but she has however devoted a major part of her study to the Gandhian period of history in South Africa. She focusses attention on the economic and class distinctions which influenced the stratification of Indian society. She was not able to visit archives in South Africa and had to rely on primary source material from the National Archives of India, the Public Record Office and India Office Records as well as studies based on extensive research within South Africa. ²⁰ She has made only brief reference to Indian political development during 1940-1946.

X Pahad has concentrated primarily on the political development of Indians. He has detailed the policies and attitudes of the various elements in the political organisations and highlights the internal dissensions and divergent views of the leaders in the various bodies. He divides his attention principally between the Transvaal and Natal, perhaps with a bias to the former. He admits that his sympathy is with the radicals ²¹ and this is certainly evident in the reading of his thesis. Pahad like Ginwala was not able to consult primary

18. Pachai, The South African Indian Question, ix.

19. M.W. Swanson, 'The South African Indian Question, 1860-1971. By Bridglal Pachai', International Journal of African Historical Studies, (1973), (6), (1), 143.

20. Ginwala, 'Class, Consciousness and Control', 9-10.

21. E. Pahad, 'The Development of Indian Political Movements in South Africa, 1924-1946' (University of Sussex, Unpublished Ph.D. thesis, 1972), 8.

source materials in South Africa. He has relied mainly on material available in the National Archives of India, a few newspapers and secondary works.

White's thesis ²² covers the period in Natal from 1943-1948. He was chiefly concerned with the gradual unfolding of Government policy towards the Indians in Natal. White has referred to a fairly satisfactory range of primary sources. Insofar as newspapers are concerned he has placed a heavy reliance on the Natal White press, though he has referred to some Indian publications, notably the Indian Opinion. He has dealt with Indian political development and land issues as peripheral to his main theme.

Calpin and Joshi have written on the Indian question with a journalistic pen. Mabel Palmer's contribution is rather general with limited reference to primary source material. While these sources are useful for a circumstantial account of Indian history in South Africa by their very nature they have their limitations.

This thesis is orientated towards an analysis of the whole Indo-European imbroglio encompassing the 'Indian penetration' question in the Durban area and the concomitant responses of Indian politics born of the anti-Indian agitation for legislation to control Indian acquisition and occupation of property in areas considered predominantly European. A detailed exposition of the local issues surrounding the Indian question is ineluctable for the better understanding of the international implications of the whole problem. Some researchers have referred very briefly to the 'penetration' issues in Durban while others have ignored them completely. The question of 'Indian penetration' and Indian politics are dealt with concurrently as both address themselves to an

22. W.B.White, 'The Evolution of Policy Towards the Indians in Natal, 1943-1948' (University of Natal, Durban, Unpublished M.A.thesis.

evaluation of the continuing crisis of the existence of the Indian community. Indian political development was closely linked to the struggle of the Indian people against anti-Indian legislation. In the main such legislation involved the question of the franchise and the acquisition and occupation of property. In this respect Durban was the focus of hysterical anti-Indianism.²³ In its relentless and unbending effort to segregate the Indians the D.C.C. as representative of collective White opinion succeeded in introducing bitter racial overtones to Indo-European relations which ultimately made the local Indian question not only a national but also an international issue.

The scope of the thesis is as follows:

In the first chapter the background to the 'penetration' issue is outlined. The question of Indian housing and the availability of civic amenities in predominantly Indian-occupied areas are examined and the role of the D.C.C. as the local authority responsible for such facilities is evaluated. Residential areas occupied by Indians are compared with those occupied by Whites to determine the validity of Indian claims of neglect by the D.C.C.

The second chapter attempts to elucidate the circumstances leading to the establishment of the Natal Indian Association (N.I.A.) and the N.I.A. co-operation with the D.C.C. on the Lawrence Committee. This effort at co-operation and conciliation proved to be a rather contentious issue. An examination of the controversy surrounding the Lawrence Committee and the reasons for the failure of the Committee is made.

23. F. Meer, 'African and Indian in Durban', Africa South, (1960), (4), 31.

Chapter Three is a detailed analysis and evaluation of the voluminous evidence and reports of the First and Second Broome Commissions. These Commissions preceded the introduction of the 'Pegging Act'. Previous researchers have not examined the evidence presented to the Commissions.

Chapter Four surveys the beginnings of the Group Areas Act when the Durban City Council subtly attempted to segregate the Indian community by expropriating Indian-owned land in Sydenham, Riverside and Merebank/Wentworth and to house Indians in Springfield and Merebank. The manner in which the Indian community managed to prevent the D.C.C. from depriving them of their land is closely examined.

The Indian community being voteless could not prevent anti-Asiatic legislation from being promulgated. Vociferous White opinion forced the Government to pass the Trading and Occupation of Land (Transvaal and Natal) Restriction Act in 1943 to 'peg' the acquisition and occupation of property by Indians in predominantly White areas. The Natal Indian Congress (N.I.C.) and the N.I.A. merged to become the N.I.C. (as established by Mahatma Gandhi in 1894). The implications of the Act and the efforts made by Indians towards their political unity form the subject matter of Chapter Five.

Chapter Six is concerned with the evaluation of the Pretoria Agreement and the Natal Ordinances. The Pretoria Agreement is seen as the quintessence of ambivalence in the Government's attitude towards the Indians. Both Indian and European reaction to this attempt to have the 'Pegging Act' annulled is analysed.

Chapter Seven attempts to explain the cataclysm in Indian politics in 1945 when the accommodationist or moderate element was replaced by the more militant and radical leadership. With the failure of the Pretoria Agreement and the expiry of the 'Pegging Act' through the effluxion of time, Smuts introduced the 'Ghetto Act'. The implications of this Act

In Chapter Eight we observe that the Indian reaction to the 'Ghetto Act' took the form of passive resistance in 1946. A brief analysis of the differences between the concepts of Satyagraha and passive resistance introduces the struggle of the Indian community to focus the attention of the world on discriminatory legislation against non-Whites in South Africa. Details of the campaign are given. An assessment is made of the efficacy of the campaign.

Finally in Chapter Nine we note that the local Indian question had become a world issue. After the South African Indian Congress (S.A.I.C.) Conference in February 1946, a resolution stipulating that if the 'Ghetto Act' was passed the matter should be taken up at the UNO was implemented by India. A brief examination is made of the principal debates at the UNO on the Indian issue and the effect of the UNO resolution 44(1) adopted on 8 December 1946 on Indo-European relations in South Africa.

The period 1940-1946 has been chosen because White agitation to prevent 'Indian penetration' began to increase in intensity in 1940. By 1946 the agitation against Indians had reached its peak with the passing of the Asiatic Land Tenure and Indian Representation Act. Whites had achieved the legislation they wanted. At this time also Indian politics had undergone a metamorphosis from an accommodationist to a more militant approach. In the post-1946 period Indian politics gave way to a general non-White agitation against all discriminatory legislation when the N.I.C. and the Transvaal Indian Congress began to ally themselves with the African National Congress (A.N.C.), adding a new dimension. This forms a completely new subject, and, in the words of Professor M.W.Swanson, 'still awaits its historian'. The 1940-1946 period is therefore the most critical years in Indian history in Natal as we see the Indian question being transferred from the local scenario in Durban to the international arena of the UNO and Indian politics identifying

My research has been enhanced by original documentary material that I have been able to trace and acquire, particularly of the Indian organisations. Though these contain to a large extent the biased viewpoints of the organisations concerned, nonetheless they have proved invaluable towards an understanding of Indian political thinking at the time. Much material considered 'incriminating evidence' was destroyed when during the 1950s and 1960s the Security Branch began arresting Indian and Black leaders. Some were destroyed through ignorance of their worth. Professors Carter and Karis fortunately collected those available to them and had them reproduced on microfilm.

Apart from some Minute and Agenda Books which contain copies of memoranda, letters, resolutions and so forth which have been referred to by such researchers as White and Pachai, other documents in my possession have not been consulted previously. I have also had access to private collections of papers. In particular, the archivalia of the Durban City Council have not been consulted at all by any of the researchers in this field. It was patently clear that Durban with its obsession to segregate the Indian community was at the very matrix of the anti-Indian agitation and therefore an examination of the records of the Durban Town Clerk's Office constitutes a sine qua non to the whole question of 'Indian penetration' in Durban and Indian politics.

The Rand Daily Mail and The Star of Johannesburg and the three major daily White newspapers in Natal, namely, The Natal Daily News, The Natal Mercury and the The Natal Witness, were the main source of White opinion consulted. The White press tended to ignore Indian politics except where they impinged on White interests although snippets of news involving the Indian community appeared from time to time. For the

Indian perspective, The Leader, Indian Views, Indian Opinion and The Passive Resister have been the principal papers consulted. These sources have during the course of time supported either the radicals or accommodationists but have been consistent in their criticism of White opinion. Relevant primary source materials housed in the various archives and libraries were also consulted as were numerous secondary sources.

In addition I have been able to interview some members of the Indian community who took an active part in Indian politics during 1940-1946. While it is true that their views are partisan depending on whether they were in the accommodationist or radical camp of Indian politics, their evidence has certainly helped to fill in the gaps where documentary evidence was not available.

Van den Berghe observes that it is a myth 'that the social scientist...can achieve olympian detachment and objectivity...'²⁴ An historian is a product of his geography and the society in which he was born. His physical environment and social milieu no doubt will influence his emotional attitude. This phenomenon tends to reduce the attainment of objectivity to an illusion and its approximation to an ideal. Nevertheless the author has borne in mind the Rankean ideal of writing history: 'Wie es eigentlich gewesen war'. Thus the analysis which follows is firmly based on the available records and the accumulation and collation of evidence produced the conclusions. The making of gratuitous inferences from the sources or imputing motives without documentary proof has been avoided. Above all the author has not embarked upon this study in order to substantiate a preconceived ideology. Finally, this thesis is an attempt to remove the hiatus that exists in Indian history in Natal particularly during the 1940s.

24. P.L. van den Berghe, 'Research in South Africa: The Story of my Experiments with Tyranny', in P.L. van den Berghe, Race and Ethnicity: Essays in Comparative Sociology (New York, Basic Books Inc., 1970), 155.

CHAPTER ONE

A SERIOUS DESIDERATUM - HOUSING FOR INDIANS

'A comfortable house is a great source of happiness. It ranks immediately after health and a good conscience.'

So said Sidney Smith (1771-1845).¹ There can be no confutation of this simple but profound comment. It has been universally accepted that shelter constitutes one of the necessities of human existence. The home - whether it is a shack, flat or mansion - is where the human family seeks protection against physical, economic or social vicissitudes.² In other words, the home is identified as the fundamental entity from which emanates the necessary biological, social, economic, spiritual, cultural, educational and other relationships and influences which control the lives of people and families.³ It is significant also that all people require the same degree of shelter.⁴ The demand for adequate housing facilities and land by the Indian community in Durban was a natural response in keeping with this universally accepted principle. The problems associated with the acquisition and occupation of housing and

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1. A. Andrews, Quotations for Speakers and Writers (London, Newnes Books, 1969), 208.
 2. Department of Economics, University of Natal, The Durban Housing Survey (Pietermaritzburg, University of Natal Press, Additional Report No 2, 1952), 1.
 3. E.J. Jammie, 'Assisted Housing Development for Whites, Coloureds and Asiatics in the Main Urban Areas of the Republic, with particular reference to the Role played by Local Authorities' (University of Pretoria, Unpublished D. Phil. thesis, 1968), 1.
 4. L. Sturrock, Summary of Report on Durban Housing (Cape Town, University of Cape Town, School of Architecture, 1939), 1.

land have pursued the Indian people throughout their history in South Africa.⁵ One may go so far as to say that the issue of land, in common with other non-European communities in Africa⁶ was not only the focal factor⁷ but in the 1940s became the epicentre of the maelstrom of Indian politics in South Africa. The endeavours made by Indians to acquire and occupy property brought in their wake a great deal of anti-Indian legislation and propaganda.⁸

Indians generally regarded a house as the chief symbol of security and prestige. It was the principal economic and emotional investment. Hilda Kuper asserts rightly: 'An Englishman's home is his castle, an Indian's home is his shrine.'⁹ This predilection for ownership of property could be considered as a basic cultural heritage among Indians.¹⁰ But it is the quality of housing and the environment in which it is situated that are important. They affect the well-being of individuals and families.¹¹

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5. F. Meer, The Ghetto People: A Study of the effects of uprooting the Indian People of South Africa (London, Africa Publications Trust, 1975), 3.
 6. See, R. Palmer, Land and Racial Domination in Rhodesia (London, Heinemann, 1977), 1.
 7. M. Webb, 'Indian Land Legislation', in E. Hellman (Ed.), Handbook on Race Relations (Cape Town, Oxford University Press, 1949), 206; see also, K.C.L., K.C.M. 21825 (Maurice Webb Papers), 'South African Indians and the Question of Land', Address, January 1948, 1.
 8. B.A. and J. Naidoo, 'Economic Opportunities and Mode of Living of the Indian Community', in M. Palmer et al., The Indian as a South African (Johannesburg, SAIRR, A Symposium, 1956), 41.
 9. H. Kuper, Indian People in Natal, xv; see also, I.A.P. (Minute and Agenda Book, N.I.C., First Conference, 10-11. 12. 1938), S.J. Smith, 'Housing and Slum Clearance', para. 8,3; I.A.P., N.I.C., First Statement on the Subject of Amenities and Housing to the I.P.C., 2.4.1941, Annexure B, 46.
 10. Rajah, 'The Durban Indian Central Business District: A Case Study in the Geography of Apartheid', 33; see also, P.C. Sykes, 'An Analysis of Income and Expenditure of Indian Families in the Clairwood Area of Durban', The South African Journal of Economics, (March 1941), (9), (1), 57; Calpin, Indians in South Africa, 104.
 11. W.L.C. Wheaton et al. (Eds.), Urban Housing (New York, The Free Press, 1966), vii.

In Durban Europeans generally occupied those areas which were situated on higher altitude, with a bracing climate, commanding views and geologically suitable for building such as: the Berea Ridge, Bluff, Montclair, Hillary-Sea View, Sherwood, Morningside, Glenwood and other areas of higher land.¹² Indians were relegated to the low-lying flats or steep valley sides, for instance: the Clairwood flats; the foot of the Berea between Greyville and Berea Road; to the west of the Berea Ridge in the regions of Cato Manor, Mayville, Sydenham, Clare Estate; north of the Umgeni in the districts of Sea Cow Lake, Riverside, Prospect Hall; in Jacobs and Merebank.¹³ It is interesting to note that there were comparatively limited areas of overlap between European and Indian occupation: the older residential areas at the foot of the Berea, between Berea Road and Stamford Hill.¹⁴

The disparity in the provision of housing and residential areas constituted one of the basic causes of attrition between Europeans and Indians in Durban. A.I. Kajee, the doyen of Indian politics, wrote: 'Housing for Indians is the touchstone of Indo-European relations. It has always been unsatisfactory.'¹⁵

12. The Durban Housing Survey, (1952), 25.

13. C.A. Woods, The Indian Community of Natal: Their Economic Position (Cape Town, Oxford University Press, Natal Regional Survey, Vol. 9, 1954), 68.

14. The Durban Housing Survey, (1952), 25.

15. A.I. Kajee, 'Indian Imbroglia: Realisable Objectives', Race Relations, (1947), (XIV), (3), 122; see also, H.R. Burrows, 'An Approach to the Indian Problem in South Africa', The South African Journal of Economics, (September 1947), (15), (3), 168; M. Webb, 'A Note on the Indo-European Situation in Natal', Race Relations, (1947), (XIV), (1), 4; M. Webb and V.S. Naidoo, The Indian-Citizen or Subject? (Johannesburg, SAIRR, 1947), 1-12; Y.S. Meer, Documents of Indentured Labour: Natal 1851-1917 (Durban, Institute of Black Research, 1980), 9-10.

The early period of Indian housing accorded with the economic and political status of Indians.¹⁶ The indentured Indians lived in barracks and huts on the plantations. Free Indians with neither capital nor security of tenure in the towns or peri-urban areas lived in structures of an impermanent character.¹⁷ Indians who could afford to do so constructed brick houses or lived in premises attached to shops and/or offices. Areas occupied by Indians came to be characterised by a welter of shacks and shanties amidst substantial homes.¹⁸

By 1925 housing conditions for Indians were extremely bad.¹⁹ The Medical Officer of Health for Durban reported the findings of a survey undertaken in 1924. He declared that 1 042 dwellings were unfit for human habitation.²⁰ Of these 86% (890) were occupied by Asiatics, 7% by Coloureds, 6% by Europeans and 1% by Natives.²¹

The condition of Indian housing did not improve appreciably by the time the Paddison Deputation²² came to South Africa. The deputation

16. I.A.P., Manuscript, D.H.17, H.R. Burrows, 'Asiatic Housing', n.d., 1; see also, L. Schlemmer, 'The Resettlement of Indian Communities in Durban and some Economic, Social and Cultural Effects on the Indian Community' (SAIRR, The Indian South African, Conference, 1966), 21.
17. Burrows, 'Asiatic Housing', 1.
18. V.S. Naidoo, 'As an Indian Sees Natal', Race Relations, (1947), (XIV), (1), 20. See photograph, 18.
19. Corbett, 'A Study of the Capetown Agreement', 8.
20. Burrows, 'Asiatic Housing', 2.
21. Ibid., 2.
22. This was a deputation of the Government of India which set sail from Bombay on 25 November 1925 for South Africa. They were to investigate the economic position and general conditions of Indians. Their report preceded the convening of the Round Table Conference between the Government of India and the Government of the Union of South Africa which culminated in the Cape Town Agreement, 1927. Corbett, 'A Study of the Capetown Agreement', 59; See also, Pachai, The South African Indian Question, 112-113; Palmer, The History of the Indians in Natal, 96; Joshi, The Tyranny of Colour, 116.



Cheek by jowl with this Indian shack are well-built Indian homes.

SOURCE: Meet the Indian in South Africa: A Pictorial Survey (Pretoria, State Information Office, n.d.).

reported, inter alia, on Indian housing.²³ Emanating from this report, the Cape Town Agreement embodied as one of its recommendations for the uplift of the Indian community an investigation into the sanitary and housing conditions of Indians in Durban and its environs, in terms of the Public Health Act.²⁴

Accordingly, on the 19 September 1928 the Minister of Public Health appointed the Executive Committee of the Central Housing Board as a Committee to enquire into the sanitary and housing conditions of Indians in and around Durban.²⁵ The chairman of the Committee was Sir Edward N. Thornton. The Committee went on a tour of inspection to various parts of the Borough of Durban and the peri-urban areas. It heard evidence from the local authorities concerned. The Indian community was allowed to express its views to the Thornton Committee through representatives of the N.I.C. and other organisations.

23. A.I.Kajee et al., Treatment of Indians in South Africa: A Memorandum of Facts (New York, S.A.I.C., 1946), 38.

24. See, Part III, Section 2(C) of the 'Summary of Conclusions Reached by the Round Table Conference on the Indian Question in South Africa'. Union of South Africa, Indian Penetration Commission Report (I.P.C.) (UG 39/1941, 25.7.41), 10-11; Pachai, The South African Indian Question, Appendix F, 290-294; Corbett, 'A Study of the Capetown Agreement', 122-128.

The relevant section reads:

'(C) to take special steps under the Public Health Act for an investigation into sanitary and housing conditions in and around Durban which will include the question of-

(i) the appointment of advisory committees of representative Indians; and

(ii) the limitation of the sale of municipal land subject to restrictive conditions.'

25. N.A., Vol. 69, File 527 (2) (D.C.C., T.C.O.), Thornton Commission Report, 8 December 1928, para. 1; see also, I.A.P. (D.C.C., T.C.O.), D.C.C.'s Third Memorandum to the I.P.C., 14.12.1940, Annexure 1, 23-29.

The Committee at the outset referred to the disquietude of the N.I.C. in connection with the Durban Land Alienation Ordinance, No. 14 of 1922(Natal). This Ordinance had empowered the Durban City Council to restrict ownership or occupation of municipal property.²⁶ The Ordinance was opposed by the N.I.C.²⁷ and efforts were made to persuade the Minister of the Interior to recommend to the Government that the Ordinance should be vetoed, but in vain. Because of the strenuous opposition to the Ordinance²⁸ the Government gave the assurance to the Indian community that:

'The Government considers it reasonable that the Administrator in giving his approval to racial restrictions introduced into land sales should see as far as possible that the Asiatics should be given reasonable opportunity of acquiring adequate residential sites.'²⁹

The assurance was of no avail. Subsequent to the promulgation of the Ordinance in 1922 the Indian community was denied the opportunity of acquiring land from the Durban City Council's unalienated holdings.³⁰ When areas such as 'Glenwood' and 'Morningside' were opened, as well as other newly developed areas, Indians were precluded from purchasing sites in these regions by an anti-Asiatic clause.³¹ Indian representatives argued that the Durban City Council had acted in breach of the Council's

26. Thornton Commission Report, para. 6.

27. Pachai, The South African Indian Question, 96.

28. A Refutation of the European Agitation against "Indian Penetration" (Cape Town, N.I.A., 1943) para. 11, 3.

29. Ibid., para. 11, 3.

30. Ibid., para. 12, 3.

31. Ibid., para. 12, 3.

undertaking to the Government in not providing land for Indians.³²

The Durban City Council in its evidence maintained that there were few available sites within the Borough which could be utilised to provide housing on a viable basis.³³ It had acquired land outside the Borough at Wentworth, Springfield and Cato Manor to be used for housing Natives and Indians.³⁴ The Council complained that the Indian community was not willing to co-operate in establishing an Indian village at Cato Manor³⁵ because they regarded it as segregation to which they were totally opposed.³⁶

Despite the vindication of its attitude by the Durban City Council, the Thornton Commission castigated the Council for its laggardness in providing housing for Indians:

'Whereas the Corporation has done a great deal for the better housing of Europeans in its area, little or nothing in this respect has been done for the Indian population...' 37

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32. Thornton Commission Report, para. 8. It was shown 'out of 14 municipal land sales all the land was earmarked for Europeans and none for Indians...'.
 33. Ibid., para. 7.
 34. Ibid., para. 7.
 35. N.A., Vol. 54, File 527 (D.C.C., T.C.O), Notes of Special Committee re Housing Meeting, 16.10.1928.
 36. Thornton Commission Report, para. 8. 'Segregation' to the Indian was akin to heaping calumny on his 'izzat' - 'honour'. Burrows' remark is pertinent to the issue: 'To many Europeans, town-planning can only be thought of in terms of racial segregation. But to the Indian, segregation in any shape or form is something to be fought with all the means at his disposal'. H.R.Burrows, 'Indian Life and Labour in Natal', Race Relations, (1943), (X), (1), 30. See also, Ginwala, 'Class, Consciousness and Control', 378, f/n.2.
 37. Thornton Commission Report, para.10; see also, S.Rustomjee et.al. South Africa defies United Nations. What next? (New York, South African Passive Resistance Council, 1947), 15.

In its recommendations the Committee suggested that housing for Indians could be provided in the area described as the Eastern Vlei³⁸ by the City Council. This would be an indication whether the Council was really desirous of fulfilling its duty towards the Indian community.³⁹ In the peri-urban areas the Committee found that the housing and sanitary conditions were appalling. They considered this typical of lands where no security of tenure was offered. They condemned the pernicious barrack system prevalent in these areas as 'one of the greatest evils the local authority has to cope with.'⁴⁰ The Committee was of the opinion that the boundaries of the Borough of Durban had to be extended to take over jurisdiction of the various health boards.⁴¹ In the interim, to alleviate the acute housing shortage for Indians the Committee recommended that of the £50 000 voted for Indian housing in terms of the Housing Act, £25 000 should be made available to the D.C.C. to provide two and three-roomed cottages on a suitable site at the Eastern Vlei. The balance of £25 000 was to be utilised for granting loans to Indians who wished to build homes for their personal occupation on freehold plots.⁴²

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38. Site of the present Windsor Golf Club. See, A.I. Kajee et al., Treatment of Indians in South Africa, 39.
 39. Thornton Commission Report, para. 13.
 40. Ibid., para. 14.
 41. Ibid., para. 17.
 42. Ibid., para. 21.

The recommendation of the Thornton Commission to construct a housing scheme on the Eastern Vlei was rejected by the D.C.C. on 1 February 1929.⁴³ The recommendation to grant loans was adopted in principle in September 1929. Regulations empowering the City Council to grant such loans however were only enacted some four years later.⁴⁴ But almost a decade had elapsed after the Thornton Committee had presented its report before the D.C.C. began to plan its first housing scheme comprising fifty economic houses and fifty sub-economic houses at Cato Manor.⁴⁵ The Council probably would not have commenced with such plans had Dr Malan, Minister of the Interior, not threatened to withdraw the £50 000.⁴⁶

In the meanwhile the recommendation of the Thornton Commission that the boundaries of the Old Borough of Durban be extended was implemented on 1 August 1932 in terms of the Durban Borough Extension and Loan Ordinance 1931.⁴⁷ The 'Added Areas',⁴⁸ as the incorporated peri-urban

43. N.A., Vol. 70, File 540 (D.C.C., T.C.O.), Indian Housing Matters and Loans, 15.11.1934, 2; see also, Burrows, 'Asiatic Housing', 3; Burrows, 'An Approach to the Indian Problem in South Africa', 168; N.I.C., First Statement to the I.P.C., 2.4.1941, para. 21, 6.

44. Burrows, 'Asiatic Housing', 3.

45. Pachai, The South African Indian Question, 129; see also, Woods, The Indian Community of Natal, 290(a), Table showing Provision for Indian Housing; G.Maasdorp and N.Pillay, Urban Relocation and Racial Segregation: The Case of Indian South Africans (Durban, Department of Economics, University of Natal, 1977), 124; Indian Opinion, 1.12.1939, 444; Indian Views, 9.9.1938, 11.

46. A.I. Kajee et al., Treatment of Indians in South Africa, 40.

47. India, Annual Report of the Agent of the Government of India in South Africa for the Year-Ending 31st December 1932, 12.

48. These were: Greenwood Park, Mayville, South Coast Junction, Sydenham, Umhlathuzana. D.C.C.'s Third Memorandum to the I.P.C., Annexure A1, 6.

regions came to be called, increased the area of Durban by some fifty-two square miles and added approximately 51 000 Indians ⁴⁹ to the total population of Durban. Incorporation did not effect any significant amelioration in the condition of the Indian community ⁵⁰ despite the fact that the D.C.C. asserted that a major portion of the money spent on Indians during the first decade of its jurisdiction over them had been expended on housing. ⁵¹

Analysing the Council's claim to be alleviating a known and serious housing problem amongst the Indian population ⁵² and fulfilling its legal obligations, the N.I.C. presented a contrasting picture to that of the D.C.C. The N.I.C. maintained that since the passing of the Housing Act No.35 of 1920 and the Durban Alienation Ordinance No.14 of 1922 (Natal), the City Council's effort to provide sites for acquisition by Indians for housing purposes had been a village scheme at Cato Manor conceived in 1929 ⁵³ and the sale of sixteen small sites in Lorne, Beatrice and Carlisle Streets. ⁵⁴ In comparison the Council had sold to

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49. S. Cooppan and B.A. Naidoo, 'Indian Adjustments to Urbanization', Race Relations, (1955), (XXII), (2), 13; see also, Burrows, 'Indian Life and Labour in Natal', (1943), 29.
 50. White, 'The Evolution of Policy, 1943-1948', 3.
 51. The Indian in Natal. Is he the Victim of Oppression? (Durban, Durban City Council and the Durban Joint Wards Committee, n.d.).
 52. P. Corbett, Housing Conditions in Chatsworth, Durban (Durban, Institute for Social and Economic Research, University of Durban-Westville, 1980), 4.
 53. D.C.C.'s Third Memorandum to the I.P.C., 14.12.1940, Minutes of the Durban City Council, 1.2.1929, Annexure 2, 30.
 54. N.I.C., First Statement to the I.P.C., 2.4.1941, 4. The N.I.A. gave the figures as 14. I.A.P., N.I.A., Final Statement to the I.P.C., 1940-1941, 15.

Europeans during the same period 1 084 sites in Stellawood, Morningside, Berea and other districts from 565 areas of unalienated land within the Old Borough of Durban at a sale price of £570 885.⁵⁵ Yet in the 'Greater Durban' area the first housing survey revealed that among the poorly housed the greatest deficiency was in respect of Asiatics.

Closely allied to the problem of housing was the question of housing loans. In terms of the Housing Act No.35 of 1920 and the Regulations thereof, the Council was empowered to grant loans to individuals for the erection of dwellings.⁵⁶ The Thornton Commission had recommended that £25 000 should be made available to the D.C.C. for granting loans to Indians.⁵⁷ It was only in September 1929 that the principle of granting loans to Indians from the Housing Loan Fund to erect buildings on their freehold properties was adopted by the D.C.C.⁵⁸

Applications were invited from Indians for loans.⁵⁹ But another two years elapsed before anything further was done. It was left to the Secretary of the Central Housing Board to remind the Town Clerk of Durban that no part of the vote for Indian housing had been used to date.⁶⁰

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- 55. N.I.C., First Statement to the I.P.C., 2.4.1941, 4-5; see also above, 20, f/n. 31.
 - 56. N.A., Vol.72, File 527(I) (D.C.C., T.C.O.), Memorandum by City Treasurer re Indian Housing, 23.11.1940, 1.
 - 57. See, Thornton Commission Report, para. 22.
 - 58. N.I.C., First Statement to the I.P.C., 2.4.1941, 6. See also above, 23, f/n.44.
 - 59. N.A., Vol.70, File 540 (D.C.C., T.C.O.), Notification: Housing for Indians, 22.10.1931. See also, D.C.C.'s Third Memorandum to the I.P.C., 14.12.1940, Annexure 7, 37.
 - 60. N.A., Vol.70, File 540 (D.C.C., T.C.O.), The Secretary, Central Housing Board - The Town Clerk, Durban, 2.5.1933.

In the meantime, twelve sites had been put up for sale by public auction at Cato Manor.⁶¹ Each plot was a quarter of an acre in extent and these plots were portions of the Cato Manor lands of the Corporation. The auction was scheduled for 4 March 1933. The upset price for each plot was £45. No restriction on ownership was levied and purchasers could obtain a loan from the Council for the erection of a dwelling. The results of the sale were disappointing. Only four lots were sold and one person acquired three.⁶²

The Town Clerk, Durban, accused the Natal Indian Congress of not being very helpful. He also alleged that there was an element of boycott of the sale.⁶³ The Town Clerk was probably correct in his surmise. As the N.I.C. later explained, the Indian community was opposed to segregation⁶⁴ and the City Council's Indian village at Cato Manor 'was actuated by a desire to segregate Indians.'⁶⁵

61. The Natal Mercury, 28.1.1933; see also, 4, 11, 18, 25.2.1933; 4.3.1933; see also, D.C.C.'s Third Memorandum to the I.P.C., 14.12.1940; Annexure 15, 47.

62. N.A., Vol. 70, File 540 (D.C.C., T.C.O.), Minutes of the Durban City Council, 21.3.1933. The Lots sold were:

LOT	BLOCK	PURCHASER	PURCHASE PRICE
5	A of M ³ of Cato Manor	Naidoo B.A.	£45
6	do do	do	£45
7	do do	do	£45
9	do do	Jadoo G.B.	£45

63. N.A., Vol. 70, File 540 (D.C.C., T.C.O.), The Town Clerk, Durban - The Secretary, Central Housing Board, 9.5.1933; see also, D.C.C.'s Third Memorandum to the I.P.C., 14.12.1940, Annexure 17, 50.

64. N.I.C., First Statement to the I.P.C., 2.4.1941, 5.

65. Ibid., 5; see also, N.I.A., Final Statement to the I.P.C., 1940-1941, 22 and 28; see also above, 21, f/n. 36.

In support of their contention the N.I.C. referred to the recommendation made by the City Estates Manager dated 23 September 1923:

'The Block is well clear of the Borough Boundary and I have no hesitation in reporting that the site is suited in every way for the creation of an Indian village Settlement where gradual segregation of the Indians from the Borough can be arrived at.'⁶⁶ More time elapsed before

the D.C.C. adopted regulations governing the granting of loans to Indians for houses on freehold property.⁶⁷ This was done on 1 February 1934.

The first loan in terms of these regulations was granted on 24 April 1934.⁶⁸ An amount of £300 at a fixed rate of interest of 4% per annum

repayable over twenty years was granted to Saminaden Chetty for the purpose of erecting a house on Lot 59 of J.H.E. of Brickfields. The conditions⁶⁹ governing the loans were suddenly amended on 21 June 1935.

The stringency of the conditions applicable to the granting of such loans disqualified many of the applicants. Consequently, the N.I.C. declared that the Indians in Durban were inclined to believe that the City Council was not sincere in its efforts to solve the Indian housing situation by providing loans for the construction of economic houses and had scuttled the initial, genuine attempts made by the Indians to

66. I.A.P. (Minute and Agenda Book, N.I.C., Provincial Conference, 19-20.2.1944), Memorandum submitted by the Natal Indian Congress to Senator The Hon. C.F.Clarkson, Minister of the Interior, on Act 35/43, commonly known as the "Pegging Act", 3; see also, N.I.C., First Statement to the I.P.C., 2.4.1941, 5.

67. Ibid., 6.

68. N.A., Vol. 70, File 540 (D.C.C., T.C.O.), Minutes of the Durban City Council, 8.6.1934.

69. See, N.A., Vol. 74, File 540 (A) (3) (D.C.C., T.C.O.), Joint Report by City Treasurer, Medical Officer of Health and City and Water Engineer to Chairman and Members of the Special Committee re Housing, 21.4.1938, 2.

alleviate their housing desideratum.⁷⁰ Moreover, the N.I.C. maintained that the Indian community was positively discriminated against. The amended rules were made applicable only in respect of loans to Indians.⁷¹

It was small wonder then that by 1940 not more than 22 loans had been granted amounting to £7 409⁷² out of 63 applications.⁷³ According to the D.C.C. the paucity of loans granted to Indian applicants was due to regulations promulgated in terms of the Housing Act No.35 of 1920.⁷⁴ It was prescribed that the maximum amount of the loan to be granted by the Council to Indians was to be 80% of the total cost of land and building. The Council argued: 'For Indians this initial requirement of a 20 per cent margin proves to be a very real difficulty.'⁷⁵ The Council also emphasised the fact that the maximum loan under the scheme was £500, repayable over 20 years with interest at 4% per annum. Under the circumstances the response from Indians for loans under this scheme proved disappointing.⁷⁶

70. Indian Views, 3.12.1937, 6; see also, N.I.C., First Statement to the I.P.C., 2.4.1941, Annexure B, 47.

71. Indian Views, 3.12.1937, 6.

72. D.C.C.'s Third Memorandum to the I.P.C., 14.12.1940, Annexure F, 70; see also, N.A., Vol.72, File 527(I) (D.C.C., T.C.O.), Memorandum by City Treasurer re Housing, 23.11.1940, 1.

73. N.I.C., First Statement to the I.P.C., 2.4.1941, 6.

74. D.C.C.'s Third Memorandum to the I.P.C., 14.12.1940, Annexure F, 70.

75. Ibid., 70.

76. Ibid., 70.

The argument propounded by the Council for the small number of loans granted to Indians cannot be controverted. But the reason advanced by the Council was not the only one for the poor response. Investigations by the City Treasurer, Medical Officer of Health and the City and Water Engineer presented a more complete picture. They adumbrated the following reasons for the lack of success by Indian applicants for housing loans:

They affirmed that the principal reason for the rejection of loan applications was 'the heavy cost of construction of the type of houses required to accommodate the applicants.'⁷⁷ The lowest non-European tenders were rejected by the City and Water Engineer on the grounds that it would not be possible for the tenderer to satisfy the condition of fair wages for all skilled workers and that the unskilled workers were to get not less than 3/- per diem.⁷⁸ With the rejection of the tender the applicant lost heart and abandoned his application.

Another reason adduced was the inadequate architectural staff to deal with the needs of Indian applicants for housing loans.⁷⁹ The officials of the D.C.C. cited the fact that Indian applicants having chosen a particular type of dwelling one day returned to request additional rooms or other amendments. Consequently the original design was completely altered affecting the estimated cost which invariably was

77. N.A., Vol.74, File 540 (A)(3)(D.C.C., T.C.O.), Joint Report to Special Committee re Housing, 21.4.1938, 3.

78. Ibid., 3.

79. Ibid., 3-4.

greatly exceeded. The applicant discontinued negotiations at that stage.⁸⁰

Indian applicants had to pay an inspection fee of 10/6 per visit while the house was being constructed. Further, they had to lodge a deposit of £3.3.0. with the City Treasurer to cover these fees. The officials of the D.C.C. declared that in regard to the inspection fees:

'...it should be mentioned that no similar charge for inspection fee is at present being imposed upon European housing loan applicants. It is not understood why this differential treatment exists as between European and Indian applicants.' 81

This observation corroborated the view of the N.I.C. that the Council was discriminating against the Indian applicants for housing loans.⁸²

The N.I.C. also contended that the procedure involved in the practical application of the regulations caused perplexity, consternation and finally frustration among Indian applicants for housing loans. The Indian applicant for a housing loan was compelled to present himself to the Borough Engineer's Department. There he had to choose from amongst a set of standard plans the one he preferred, or go without any if there was none to his liking.⁸³ Thereafter, he had to satisfy the City Treasurer that his financial position warranted the granting of a loan. Having complied with these demands, he then had to await the calling of tenders by the Borough Engineer.⁸⁴ Needless to say, there

80. Ibid., 3-4.

81. Ibid., 4.

82. See above, 27.

83. Indian Views, 3.12.1937, 6.

84. N.I.C., First Statement to the I.P.C., 2.4.1941, Annexure B, 47.

was a ' long delay between the submission of an application and the calling of tenders.'⁸⁵ Moreover, as the Corporation had no specific department to deal with these matters, as mentioned previously,⁸⁶ the ad hoc arrangements resulted in little success of applications for housing loans by Indians.⁸⁷ The N.I.C. concluded, therefore:

'If these new regulations had been deliberately framed with a view to discouraging Indians obtaining Housing Loans, they could not have been made more effective...' ⁸⁸

The D.C.C. also showed an unconcerned attitude towards the actual provision of economic and sub-economic housing for Indians. As early as 1937 the Special Committee for housing had recommended the provision of sub-economic housing schemes for Indians at Cato Manor and Springfield.⁸⁹ The reason for such a suggestion was to accommodate those Indians who were being dehousing in Mayville and Riverside in terms of the Council's slum clearance activities.⁹⁰ These schemes provided for fifty detached cottages at Cato Manor and another fifty at Springfield.⁹¹ Each house was to be self-contained with its own garden.⁹²

85. N.A., Vol.74,File 540(A)(3) (D.C.C.,T.C.O.), Joint Report to Special Committee re Housing, 21.4.1938, 3.

86. See above, 29.

87. Indian Views, 3.12.1937, 6.

88. N.I.C., First Statement to the I.P.C., 2.4.1941, Annexure B, 48.

89. N.A., Vol.74,File 540(A)(1) (D.C.C.,T.C.O.), Report of Special Committee re Housing, 20.1.1937, 1.

90. Minutes of the Durban City Council, 8.2.1937, Sub-Economic Housing Scheme for Indians.

91. Ibid.

92. Indian Views, 15.1.1937, 1.

Insofar as an economic housing scheme was concerned the City Council took a decision on 6 December 1937⁹³ as follows: One hundred quarter-acre sites at Cato Manor were to be utilised for an economic housing scheme for the Indian community. Fifty of these sites were to be made available to applicants who wished to engage their own contractors.⁹⁴ The remaining fifty sites were to be devoted to the construction of fifty detached four-roomed houses erected at a total cost of £31 273.⁹⁵ The selling prices of these houses were to range from £500 to £660. The monthly repayment was computed as ranging from £2.12.0. to £3.0.0. extending over a period of 29 years. A deposit of £5 was required.⁹⁶

The reactions of the Indian community and the Durban City Council to the schemes differed. While the Council considered their schemes as roses the Indian community looked upon them as rue. The City Treasurer appeared satisfied that the schemes proposed by the D.C.C. were provided with basic amenities such as hardened roads, street lighting, electricity and adequate storm water drainage. He expressed regret that despite the very easy terms of purchase and the extensive publicity given to the schemes⁹⁷ the Indian community showed no enthusiasm to occupy such houses as were constructed. He concluded that such an attitude made 'the Council's task in undertaking further major housing schemes for Indians a somewhat difficult one.'⁹⁸ In

93. I.A.P., The Town Clerk, Durban - City Treasurer, Durban, 9.3.1938.

94. Ibid.

95. N.A., Vol.72, File 527(I) (D.C.C., T.C.O.), Memorandum by City Treasurer re Indian Housing, 23.11.1940, 4.

96. Ibid., 4; see also, D.C.C.'s Third Memorandum to the I.P.C., 14.12.1940, Annexure F, 68.

97. N.A., Vol. 72, File 527(I) (D.C.C., T.C.O.), Memorandum by City Treasurer re Indian Housing, 23.11.1940, 4.

98. Ibid., 5.

contrast he pointed out that there was a long waiting list for houses in the various European schemes.

Jammine points out that of all the racial groups the Asiatic group in Durban was in greatest need of housing.⁹⁹ The acute shortage of houses for Indians in Durban was aggravated by the fact that the Indian community was the most 'youthful group'.¹⁰⁰ 48% of Indians in 1946 were under the age of fifteen years and only 10% above forty-five years of age.¹⁰¹ In marked contrast, the European population was by far the 'oldest' group¹⁰² with a low-birth-rate and a mere 26% of its population under fifteen years of age.¹⁰³ The statistics lucidly indicated that more houses and schools for the youthful Indian population and more hospitals and bowling greens for the ageing European section were required.¹⁰⁴

99. Jammine, 'Assisted Housing and Development...', 333.

The projections for Indian housing requirements were as follows:

YEAR	TOTAL NUMBER OF DWELLINGS REQUIRED	NUMBER REQUIRED TO BE BUILT DURING THE YEAR
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1940	17 334	1 040
1941	18 374	1 102
1942	19 476	1 169
1943	20 645	1 239
1944	21 884	1 313
1945	23 197	1 392
1946	24 589	1 475

N.A., Vol.13, File 31E (D.C.C., T.C.O.), D.H.6, H.R.Burrows, 'Estimated Housing Requirements', 8.

100. Ibid., 7; see also, S.A. Khan, The Indian in South Africa (Allahabad, Kitabistan, 1946), 246; H.R.Burrows, Indian Life and Labour in Natal (Johannesburg, SAIRR, Revised Edition, New Africa Pamphlet No 23, 1952), 2-8; Woods, The Indian Community of Natal, 1-11. See, 350-353, Appendix I, Figures 1-6, where the graphs and sex-age pyramids clarify the position.

101. Burrows, Indian Life and Labour in Natal, (1952), 5.

102. P.J.de Vos, 'Indian Imbroglia: Some Sociological Aspects', Race Relations, (1947), (XIV), (3), 99.

103. Burrows, Indian Life and Labour in Natal, (1952), 5.

104. Ibid., 6.

It is quite obvious that if there was a reluctance on the part of the Indian community to occupy the houses on offer by the Council it was not because there was a surfeit of Indian housing. The answers must be sought elsewhere. The possible reasons for Cato Manor could be outlined as follows: there was the fear that it was the forerunner to segregation;¹⁰⁵ the sites were unsuitable;¹⁰⁶ the topography offered poor resistance to the effects of weathering;¹⁰⁷ the nature of excavations made to construct the houses prevented adequate air flow around and through the houses making living conditions unhealthy;¹⁰⁸ there was inadequate drainage which caused dampness on the walls of the houses and water-logging;¹⁰⁹ the houses were of poor design and construction;¹¹⁰ no sphere of employment existed in the area;¹¹¹ no good, cheap transport was available to other parts of the city.¹¹²

105. N.I.C., First Statement to the I.P.C., 2.4.1941, 5.

106. N.A., Vol.74, File 540(A)(1) (D.C.C., T.C.O.), N.I.C. - The Town Clerk, Durban, 2.2.1937.

107. Sturrock, Summary of Report on Durban Housing, 8.

108. Ibid., 8.

109. I.A.P., N.I.C., Memorandum on Cato Manor Indian Economic Housing Scheme, 5.

Note: This memorandum constitutes part of the reports of the investigations into housing conditions and housing needs and the provision of civic amenities in various predominantly Indian-occupied areas. Copies of these reports are not available in the archives.

110. N.A., Vol.71, File 527(14) (D.C.C., T.C.O.), City and Water Engineer's Department, Notes on Memorandum to be submitted to the Prime Minister on 12th October, 1945, 9.10.1945, 1.

111. Sturrock, Summary of Report on Durban Housing, 9.

112. Correspondence with Paraw Seebran, pioneer resident of Mayville and a cultural leader of the Indian Community, 25.3.1981; see also, The Graphic, 11.4.1980.

In Springfield amenities were seriously lacking: no pathways, insufficient taps for water supplied communally, unsatisfactory sanitary arrangements and so on.¹¹³

Professor Burrows observed that many who needed the houses could not afford either the rentals or instalments for the sub-economic or economic houses and the main problem was therefore one of poverty.¹¹⁴ The City Valuator and Estates Manager and the City Treasurer concurred¹¹⁵ in the opinion expressed by Burrows as did the N.I.C.¹¹⁶ Indian Views maintained that the wages earned by the people for whom the houses were constructed were very low and they would suffer immense financial hardships if they committed themselves to occupy the Council houses.¹¹⁷ The City Council refused to construct further houses for Indians because of their response to the schemes at Cato Manor and Springfield. H.G.Lawrence, Minister of the Interior, saw the attitude adopted by the Council towards the housing schemes for Indians as linked to the issue of 'Indian penetration'.¹¹⁸ Indian leaders claimed

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113. N.A., Vol.74, File 540(A)(5) (D.C.C.,T.C.O.), Statement, Durban Indian Municipal Employees' Society submitted to the Durban City Council's Special Committee on Housing, 21.3.1944, 2.
114. H.R.Burrows, 'Indian Imbroglio: Economic Status', Race Relations, (1947), (XIV), (3), 94.
115. N.A., Vol.74, File 540(A)(4) (D.C.C.,T.C.O.), Memorandum for Finance Committee re Rentals: Springfield Sub-Economic Housing Scheme, 11.3.1943, submitted by the Town Clerk, Durban, 31.3.1943, 2; N.A., Vol.74, File 540(A)(3) (D.C.C.,T.C.O.), The City Treasurer, Durban - The Town Clerk, Durban, 19.4.1938, 6.
116. N.A., Vol.74, File 540(A)(1) (D.C.C.,T.C.O.), N.I.C. - The Town Clerk, Durban, 2.2.1937, 2.
117. Indian Views, 23.6.1939, 2.
118. N.A., Trunk 0433, (D.C.C.,T.C.O.), Minutes of Council-in-Committee, 24.10.1939, 2082; see also, N.A., Vol.71, File 527(9) (D.C.C.,T.C.O.), Memorandum to Durban City Council's Deputation to Interview His Honour The Administrator and the Hon. The Minister of the Interior, 11.11.1942, 1.

that the principal reason for 'Indian penetration' was this refusal of the D.C.C. to provide adequate housing for the poorer class and to make available building plots for those who wished to construct their own houses.¹¹⁹ This deprivation was compounded by 'the deliberate neglect of Indian areas.'¹²⁰

The Indian Opinion criticised the Council's housing policy as being based on racial discrimination:

'In the case of Europeans they build decent houses at cheap rentals and supply them with all the civic amenities including transport facilities.'¹²¹

The survey of the Natal Indian Congress clearly demonstrated the factual situation.¹²² In the Clairwood area¹²³ there was a total Indian population of 7 659 occupying 763 houses.¹²⁴ This region was considered

119. Statement on the alleged question of Indian penetration to the Hon. The Minister of the Interior(Cape Town, N.I.C., 1943), para. 22.

120. L. Kuper et al., Durban: A Study in Racial Ecology, 147.

121. Indian Opinion, Editorial, 6.2.1942, 42.

122. See above, 34, f/n.109.

123. N.I.C., Report of Investigation into Housing Conditions and Housing Needs, and the Provision of Civic Amenities in portion of Rosburgh known as Clairwood, 27.7.1944, 2. The region investigated covered approximately 350 acres, and was bounded roughly by the Umhlathuzana River, South Coast Railway Line, Trent Road, Main South Coast Road, Brickfield Road, Shale Road, Amanzinyama Sluit and Archary Road Extension, excluding a strip of ground adjoining the Main South Coast Road on which there were 12 squatters' shanties.

124. Of these 763 houses

322 belonged to Class I

288 belonged to Class II

153 belonged to Class III where

Class I = Houses which satisfied the requirements of the Durban Corporation and compared favourably with houses in European areas such as Montclair and Durban North.

Class II = Houses which satisfied the requirements of the Durban Corporation but needed renovation.

Class III = Houses which had to be demolished.

Ibid., 1.

to be the most densely populated in Durban, ¹²⁵ greatly overcrowded ¹²⁶ and with extremely grave housing needs. ¹²⁷

Insofar as civic amenities were concerned a comparison was made with Montclair, a contiguous area occupied by Europeans, to show the degree of neglect on the part of the D.C.C. to provide amenities and services to the Indian community. ¹²⁸ Ninety per cent of the roads in Montclair were macadamised while only 25% of roads in Clairwood were similarly constructed. Only three roads in Clairwood were provided with footpaths, but were overgrown with grass and vegetation; in Montclair, nearly all the roads were served with footpaths and were well maintained. In the Clairwood area only three roads were kerbed and had been serviced with gutters. In Clairwood, many of the roads were

125. The Durban Housing Survey, (1952), 279.

126. Burrows, 'Asiatic Housing', 12.

127. The N.I.C. projected the following housing requirements for the area:

Houses already in existence:

Class I	322
Class II	288

Houses needed:

Loan assisted on freehold property	120
Sub-Economic	250
Economic or Loan - assisted	295
Total	1 275
	=====

N.I.C. Report of Investigation...Clairwood, 27.7.1944, 4.
128. Ibid., Annexure 3.

characterised by open trenches covered with stagnant pools of water. The Montclair area was conspicuous by its kerbed roads and gutters with no open drains or stagnant water. In addition the roads were wide in contrast to the narrow hardened area for traffic in Clairwood.

Similarly, contrasts existed in relationship to recreational facilities. Montclair boasted an up-to-date recreational ground for both adults and children as well as a park provided by the Municipality. None of these amenities was to be found in Clairwood for the Indian community. The N.I.C. also pointed to the disparities in such facilities as postal services, police protection and lighting. All things considered, it was very evident that the Clairwood area was in a neglected state.¹²⁹ Other areas surveyed, such as the Puntan's Hill - Overport - Springfield area,¹³⁰ the Mayville area¹³¹ and Sydenham¹³² generally presented as

129. The Durban Housing Survey, (1952), 279.

130. N.I.C., Report of Investigation...Puntan's Hill - Overport - Springfield Area, 1-2. The area surveyed was bounded by Quarry Road, Alpine Road, Mountain View Road, Haig Road and the Umgeni Quarries. Total population 1 992 in 238 houses: 36 Class I; 72 Class II; 130 Class III, covering 160 acres.

131. N.I.C., Report of Investigation...portion of Mayville, 1-6, Annexure A-E. This area comprised approximately 60 acres bounded roughly by Cato Manor Road, Molver Road, Standard Road, Ashwell Road, Trimborne Road and Rathmines Road.

132. N.I.C., Report of Investigation...portion of Sydenham. This area was surveyed in two parts. The first part was bounded by Randles Road, Kenilworth Road, Brickfield Road and Sparks Road. The area covered comprised 90 acres approximately, with a total population of 1 174 persons in 128 houses (60 Class I; 40 Class II; 28 Class III), 1-2. The second report surveyed an area of 50 acres with a population of 728 occupying 68 houses divided into the following categories:

21 Class I

23 Class II

24 Class III.

The region was bounded by Randles Road, Garbutt Road, (later Barns Road), St Theresa Road and Mayflower Road, 1-2.

dismal a scenario as that of Clairwood. The most densely populated Indian region in the Overport area ¹³³ bounded by East Street, Silverpalm Road, West Road and Crescent Street showed a distinct improvement in civic amenities over that of the other Indian areas mentioned. This was probably because of its close proximity to the European area along Ridge Road or because it was formerly occupied by Europeans. But with a population of 1 396 living in 148 houses over an area of 100 acres, the serious problem of overcrowding could not be eschewed: the average number of persons per acre was 14; the average number of persons per house was 9,43 and the average number of persons per bedroom was 2,9. ¹³⁴

These areas surveyed by the N.I.C. constituted regions where owner-occupancy was considerably higher than say the Clairwood-Jacobs area, where tenant-occupation was the basic characteristic. In fact this area comprised four squatters' settlements accommodating in excess of 3 000 families occupying some 426 shanties constructed mainly from wood and iron. ¹³⁵ The report stated explicitly, 'None of these can be

133. N.I.C., Report of Investigation...Section of Overport, 1.

134. *Ibid.*, 2. Of the houses occupied 31 were categorised Class I; 77 Class II; 40 Class III.

135. N.I.C., Report on Housing Conditions and Housing Needs in the Slum Areas at Clairwood South and its Immediate Neighbourhood, 1.
The largest of the settlements extended from the Clairwood schools in the north to within approximately 1/2 mile (0,8km) of the Clairwood Race Course in the South. The area was bounded by the Main South Coast Road on the West, flanked most of the way by the Amanzinyama Sluit in the east. The other settlements were removed some distance from it: one near the entrance of the Clairwood Race Course; second, south of the Wireless masts at Jacobs; third, facing Dudley Street in the 'Ropes and Matting Area' in Jacobs.

called homes' and added that the 'shanties are unfit for human habitation.'¹³⁶ The interesting fact was that the Durban Corporation as the landlord - the lands were leased to the squatters by it¹³⁷ - allowed the situation to persist. The conditions prevailing in these areas were deplorable, extremely unhygienic and most depressing emphasising the dire urgency for the City Council to erect houses for the Indian community conforming to civilised standards of living.¹³⁸ For instance, tap-water was only provided after an outbreak of typhoid. Some eighteen taps were installed for the entire Clairwood South slum serving a congeries of 295 shanties¹³⁹ for which a water charge of £1.5.0 per annum per house was levied. It was also observed that around the 'communal taps' no outlets were provided so that water remained stagnant, proving an ideal breeding place for mosquitoes. The report on this area concluded with a reference to the Corporation's neglect in removing household refuse. The resultant fetid pollution was phenomenal.¹⁴⁰

136. Ibid., 1.

137. Ibid., 1.

138. Ibid., 3.

139. Ibid., 6.

140. Ibid., 6.



A typical Indian worker's home.

SOURCE: How we live...An Album of Photographs
showing the Living Conditions of the
Indian People in South Africa
(Durban, Joint Passive Resistance Council,
n.d.)

A section of the Clairwood Slums.



The N.I.C. housing survey also included the Riverside-Briardene area.¹⁴¹ This area had been in the ownership and occupation of Indians for more than seventy years¹⁴² and some families went back to four or five generations.¹⁴³ This area was one of the few choice residential sites¹⁴⁴ with sea-views enjoyed by Indians and in the 1940s had become the subject of acerbic controversy when the City Council attempted to expropriate the area for European housing.¹⁴⁵

The report emphasised that even in this 'choice residential' site the amenities provided could hardly compare with those of the European areas. Out of a total of 600 acres, Indians owned 325 acres with 351 houses characterised by a high owner-occupancy.¹⁴⁶ The report concluded that there was a marked inclination on the part of the owners to construct good houses in this area, and implored the City Council to encourage this tendency.¹⁴⁷

141. N.I.C., Report of Investigation...Riverside - Briardene Area. This area lay to the north side of the Umgeni River, stretching from the sea-front in the east to the Main North Coast Road in the west; from the Umgeni River in the south to the line roughly through Briar Lane, Anthony Road and Oxford Drive in the north. The north-line was roughly the boundary between the predominantly Indian area and the predominantly European area of Red Hill and Durban North.

142. The Durban Housing Survey, (1952), 283.

143. N.I.C., Report of Investigation...Riverside-Briardene, 1.

144. The Leader, 1.8.1942, 4.

145. The Durban Housing Survey, (1952), 284; see also below, Chapter Four.

146. 80 Class I houses with 87,5% owner-occupancy; 12,5% rented.

101 Class II houses with plus/minus 70% owner-occupancy; plus/minus 14% monthly tenancy; plus/minus 17% by squatters paying a yearly squatting fee.

170 Class III houses with 32% owner-occupancy; 32% tenants; 36% squatters.

N.I.C., Report of Investigation...Riverside - Briardene, 3.

147. Ibid., 3.

The reports of the N.I.C. investigations into housing conditions in the various predominantly Indian areas presented a labyrinthine complexity of statistics and details. But what is crystal clear is that the civic amenities and services provided by the City Council in these areas were grossly inadequate when compared to those areas in which Europeans lived. The inevitable conclusion is that the 'unjust policies of European authorities' ¹⁴⁸ generated 'Indian penetration'.

Mc Entire postulates that: 'In the general movement toward equal rights and opportunity, housing is a crucial area. One of the basic liberties of citizens in a free society is the freedom to move and to choose a place of residence.' ¹⁴⁹ In this context, Indians, like other communities, displayed 'communal instincts' ¹⁵⁰ naturally preferring to live with their kith and kin. ¹⁵¹ as did the Jews, Italians, Coloureds and others in New York who settled in different regions 'not because of any law but because of the natural tendency of man to gravitate towards persons of the same culture and common associations.' ¹⁵² Indians adopted a pattern of de facto agglomeration with relatives, friends and

148. L. Kuper et al., Durban: A Study in Racial Ecology, 147.

149. D. Mc Entire, Residence and Race: Final and Comprehensive Report on Race and Housing (Berkeley and Los Angeles, University of California Press, 1960), 4-5.

150. L. Kuper et al., Durban: A Study in Racial Ecology, 147.

151. Khan, The Indian in South Africa, 246; see also, H. Kuper, 'Indian Elites in Natal, South Africa' (University of Natal, Durban Institute for Social Research, Social Science Conference, 16-22 July, 1956), 134; S.A.Khan, The Indian in Natal (Durban, Aboobaker Moosa, N.I.C., 1943), 18-19; Swami B. Dayal (Sannyasi), South African Indian Congress, Sixteenth Session (Pravasi-Bhawan, Ajmer, Author, 1943), 8.

152. Khan, The Indian in South Africa, 247.

people coming from the same village in India and of similar 'caste-groups'. The reluctance of the D.C.C. to provide adequate housing and civic facilities upset the pattern. Indians attempted to procure such services and improve their standard of living by purchasing property in predominantly European areas.

White opinion led by the D.C.C. then resorted to demands for a de jure segregation of the Indian community. Senator C.F. Clarkson, Minister of Posts and Telegraphs and of Public Works, pointed to the very heart of the 'penetration' issue when he commented: '...nothing had been done for Indians on the lines of what had been done for Europeans at Glenwood and Morningside.'¹⁵³ W.A. Deane, M.P. (Pietermaritzburg City) declared that the D.C.C. was guilty of 'gross neglect' and 'absolute disgrace' in providing houses of decent quality for Europeans with every amenity while Indians were left in slums.¹⁵⁴ Similarly P.R. Pather, a veteran Indian leader highly respected by the Indian community, remarked: '...in the provision of housing for [Indians] the Durban City Council has followed a policy of laissez faire. In fact, the Council has been criminally negligent.'¹⁵⁵

153. The Natal Witness, 4.12.1943; see also, W.C.L., A1/Dg (Hofmeyr Papers, Parliamentary Papers and Correspondence: Asiatic and Indian Affairs, 1935-1948), for a copy of the news item.

154. Hansard, Debates of the House of Assembly, Vol. 46, 29.3.1943, Cols. 4255-4256.

155. P.R. Pather, Seventy Years of Frustration and Unhappiness (Durban S.A.I.O, n.d.), 3.

With the exception of the housing schemes at Cato Manor and Springfield the D.C.C. provided no housing for the Indian community. 'Indian areas' were neglected by the Corporation. Had the Council approached the whole question of Indian housing and the provision of civic amenities 'on the basis of justice and respect for the humanity of all men' ¹⁵⁶ the disabilities of occupational choice and related limitations imposed on the Indian community would have been reduced so drastically that little or no 'Indian penetration' would have been experienced. ¹⁵⁷ Europeans could exercise through the ballot their demands for housing and civic amenities. Indians could not and although they paid the same rates they were generally deprived of the services that White ratepayers enjoyed; if provided, the D.C.C. did so reluctantly or sparingly. ¹⁵⁸ It was because of the inability to secure decent houses in their own areas that they looked for such houses in predominantly European areas. ¹⁵⁹ 'They either had to penetrate', commented Mabel Palmer, 'or remain in dirty, overcrowded slums.' ¹⁶⁰ The desire to live under decent conditions led to a long, hard struggle for the Indian community in Durban and eventually in the rest of the country.

156. 'Indian Imbroglia: Findings of the Regional Conference', Race Relations, (1947), (XIV), (3), 131.

157. L. Kuper et al., Durban: A Study in Racial Ecology, 147.

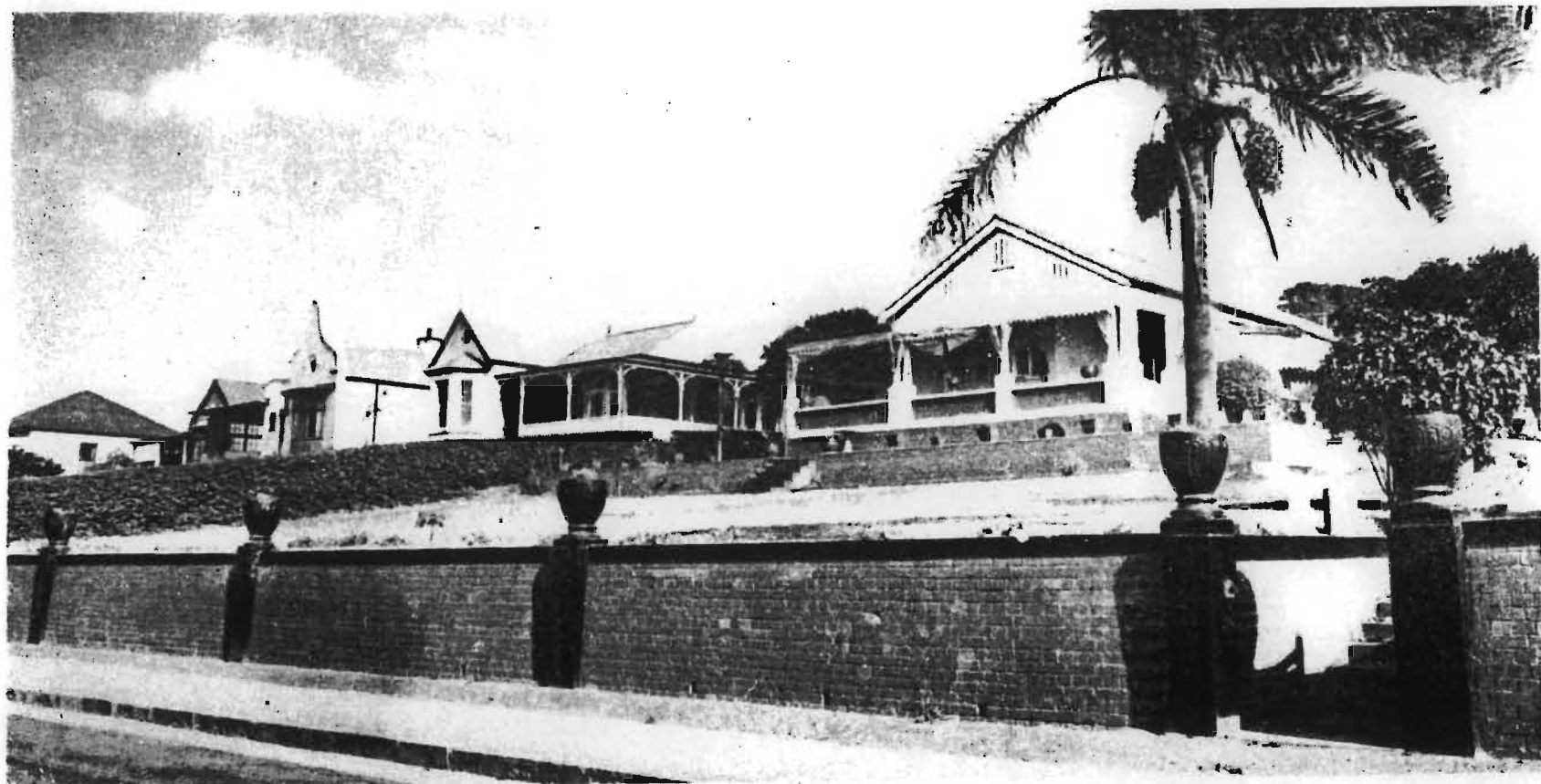
158. M. Palmer, Natal's Indian Problem (Johannesburg, Society of Friends of Africa, South African Affairs Pamphlets No.9, Second Series, n.d.), 29.

159. M. Palmer, 'The Indian Problem', The Farmer (19.4.1946), (XXXV), (16), 15.

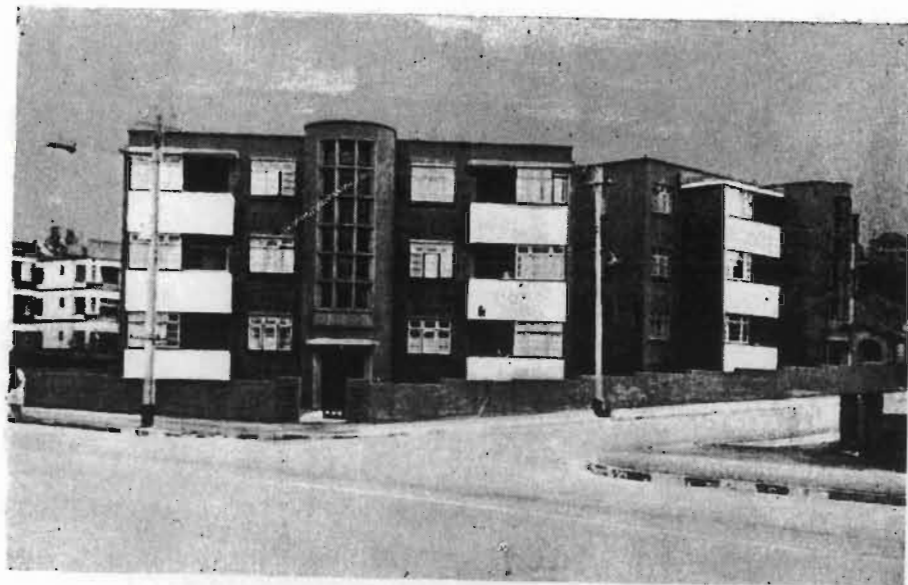
160. Palmer, Natal's Indian Problem, 30.

Once European . . . Now Indian

The purchase of homes such as these was a major cause of the public unrest which preceded the Asiatic Land Tenure and Indian Representation Act.



SOURCE: Meet the Indian in South Africa: A Pictorial Survey
(Pretoria, State Information Office, n.d.).

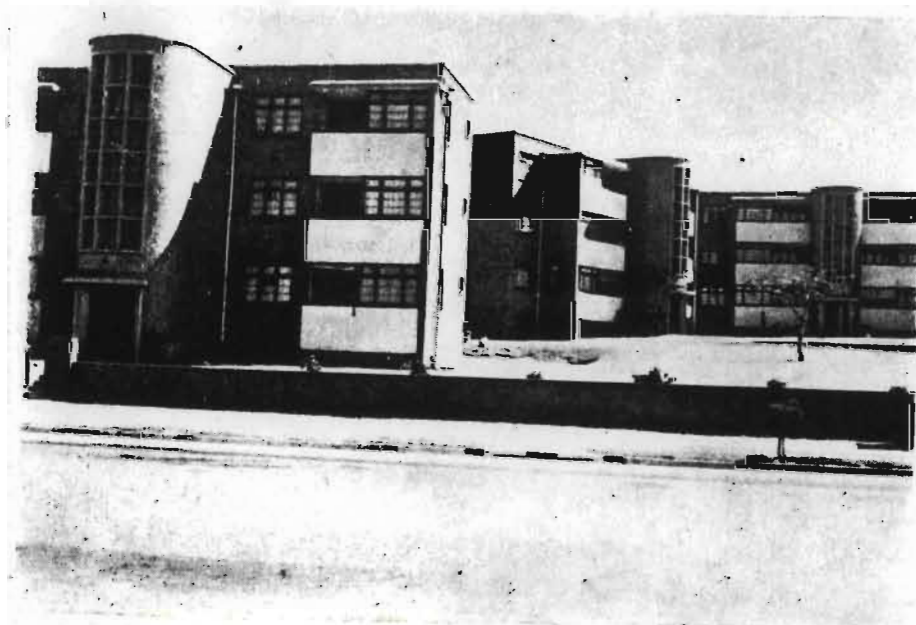


MUNICIPAL FLATS FOR WHITES

MUNICIPAL FLATS.

Umgeni Road, Durban.

Source: How we Live...An Album of Photographs showing the Living Conditions of the Indian People in South Africa (Durban, Joint Passive Resistance Council, n.d.).



MUNICIPAL FLATS.
Stranack Road, Durban.

CHAPTER TWO

POLITICS OF CO-OPERATION AND CONCILIATION - THE PARTURITION OF THE NATAL INDIAN ASSOCIATION AND THE LAWRENCE COMMITTEE

Influential White groups and political parties in Durban began to agitate against the residential juxtaposition of Indians and Europeans, economic competition offered by the Indians and the burgeoning of the Indian population. They demanded restrictive legislation ¹ as a bulwark against what they believed was a threat against European standards and dominance. ² Whites perceived Indians as being of little or no benefit to South Africa, their contribution to the economic development being utterly disregarded. Senator C.F. Clarkson, the Minister of the Interior, remarked: 'I realise that there is a section of the European population which sees no virtue at all in the Indian and is all out for any repressive measures that can be brought into existence to make things not only uncomfortable but degrading for him.' ³

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1. For a compendium of anti-Indian Legislation, see, G. Singh, The Asiatic Act...The Asiatic Land Tenure and Indian Representation Act of South Africa (Durban, Council for Human Rights, 1946), 10-18; see also, Joshi - The Tyranny of Colour, 312-313; M. Horrell, Legislation and Race Relations: A Summary of the Main South African Laws which affect Race Relations (Johannesburg, SAIRR, Revised Edition, 1966).
 2. G. Carter, The Politics of Inequality: South Africa since 1948 (London, Thames and Hudson, 1958), 362; see also, G. Maasdorp and N. Pillay, 'Indians in the Political Economy of South Africa', in B. Pachai (Ed.), South Africa's Indians: The Evolution of a Minority (Washington, D.C., University Press of America, Inc., 1979), 209-54.
 3. The Natal Mercury, 4.12.1943; see also, Minute and Agenda Book, N.I.C., 19-20.2.1944, 'Minister Advocates Asiatic Franchise', 1.

Indians were being regarded as a political and social nuisance. It is against this scenario of an almost pathologically mordant anti-Indian agitation by Whites that the question of 'Indian penetration' and Indian political development must be viewed. Pachai distinguishes five broad periods in the development of Indian political reactions in South Africa: 'the absence of organized politics (1860-1892); the Gandhian period and the formation of regional political organisations (1893-1914); the politics of collaboration at national and international levels (1915-1945); the politics of resistance (1946-1960) and the politics of accommodation (1961-1976)'.⁴ Ginwala⁵ and Pahad⁶ have also elucidated Indian political action, reaction and counter-action to anti-Indian legislation on a national level.

We shall be concerned with the specific role played by the Indian political organisations in Durban to remove the disabilities suffered by the Indian community during the 1940s. While Pachai's broad divisions of South African Indian politics would accord with the political growth and development of Indians, our objectives necessitate further sub-divisions: 1939-1943, the parturition of the N.I.A. and the dual representation of Indian interests by the N.I.A. and the N.I.C., generally characterised by a policy of co-operation and conciliation; 1943-1944, the

4. B. Pachai, 'Aliens in the Political Hierarchy', in Pachai (Ed.), South Africa's Indians: The Evolution of a Minority, 2-3.

5. Ginwala, 'Class, Consciousness and Control'.

6. Pahad, 'The Development of Indian Political Movements'.

Note: Pahad has made a detailed study of the various Indian political organisations in South Africa. Our objective in dealing with Indian politics is primarily orientated towards an assessment of Indian reaction to anti-Indian legislation relevant to 'Indian penetration' and the numerous ramifications thereof particularly in Durban. Hence our emphasis has been on the development of the organisations in Natal.

reconstitution of the N.I.C. (as established by Mahatma Gandhi in 1894) still following a policy of moderation; 1945-1946, the emergence of the 'Young Turks' or the radical group.

The moderate Indian political leaders sought a modus vivendi on the basis of 'placating White prejudices and White hostilities rather than opposing these, in allaying White fears, rather than exploiting them,...'.⁷ Though they claimed a moral right to equality they capitulated on the issue of White supremacy. E.M. Paruk, President of the N.I.C., stated in his Presidential address to Conference: 'There is no desire on the part of the Indian community to assail the supremacy of the white man.'⁸ Indian leaders were described as people 'who demanded the gradual extension of opportunities for their people, who presented their case by means of deputations and memoranda.'⁹ The strategy of conciliation, co-operation and compromise that dominated Indian political protest was 'the story of a retreat, however slow and painful, from one defensive position to another.'¹⁰ It was the story of 'broken pledges' to the Indian community by the authorities.¹¹

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7. F. Meer, 'An Indian's Views on Apartheid', in N.J.Rhodie (Ed.), South African Dialogue: Contrasts in South African Thinking on Basic Race Issues (Johannesburg, McGraw-Hill Book Company, 1972), 445.
 8. I.A.P. (Minute and Agenda Book, N.I.C., Third Provincial Conference and Annual General Meeting, 14.9.1941), E.M.Paruk, Presidential Address, 4; see also, Minute and Agenda Book, N.I.C., 19-20.2.1944, S.R. Naidoo, 'The Problem of Franchise', 7; Meer, 'An Indian's Views on Apartheid', 446.
 9. E. Hellman, Racial Laws versus Economic and Social Forces (Johannesburg, SAIRR, 1955), 34-35.
 10. P.D.Pillay, 'Indian Political Expression in South Africa' (University of London, Institute of Commonwealth Studies, Seminar Paper, 1965), 1.
 11. Z.Seedat, 'Political Development among Indian People', in Race and Politics in South Africa (University of Cape Town, Summer School, 1973), 2.

The moderate leadership had achieved very little and by their lack of success in redressing the grievances of the Indian community, were discredited.¹² They were succeeded by leaders who were 'more militant, more uncompromising.'¹³ They demanded equality in contrast to increased rights and opportunities.

Indian politics during 1940-1946 was bedevilled by the conspicuous lack of a cohesive bloc.¹⁴ The Indian community was apparently not immunised against the infection of communalism.¹⁵ They exhibited fatal symptoms of internal dissensions in social, political and economic matters of vital concern to the total Indian community. Calpin, former editor of The Natal Witness and A.I. Kaje's friend and adviser, wrote: 'Communalism is the bane of Indian politics...'.¹⁶ The divisions in the ranks of Indian politicians were less in terms of policies than personality differences.¹⁷ But there were also divisions along religious and linguistic lines,¹⁸ which began to become less noticeable when the radical group supported by the mass of workers came to the fore. This fragmentation weakened the Indian political response to events which were deleterious to the entire Indian community.

12. Hellman, Racial Laws versus Economic and Social Forces, 35.

13. Ibid., 35.

14. R.E. Johnson, 'Indians and Apartheid in South Africa: The Failure of Resistance' (University of Massachusetts, Unpublished Ph.D. thesis, 1973), 9.

15. N. Gangulee, Indians in the Empire Overseas - A Survey (London, The New India Publishing House Limited, Charles Freer Andrews Memorial Volume, 1947), 222.

16. Calpin, Indians in South Africa, 122.

17. Meer, 'An Indian's Views on Apartheid', 441.

18. Johnson, 'Indians and Apartheid in South Africa', 9.

In opposition to the colonisation scheme proposed at the Second Cape Town Agreement in 1932 and the participation by the S.A.I.C. in the Young Commission of Enquiry, colonial-born Indians broke away from the N.I.C. to form the Colonial Born and Settlers' Indian Association (C.B. and S.I.A.). They were led by Advocate Albert Christopher, veteran Indian politician and son of an ex-indentured labourer. The C.B. and S.I.A. was inaugurated on 22 August 1933.¹⁹ By the late 1930s the differences existing between the C.B. and S.I.A. and the N.I.C. in relation to policy had become 'increasingly unreal'.²⁰

The time was ripe for the integration of the two bodies under the threat of impending segregatory legislation.²¹ The Agent-General for India, Sir Benegal Rama Rau, persistently urged unity²² while the radicals were insisting that the bodies should merge.²³ Sir Sarvapalli Radhakrishnan, the eminent philosopher and statesman visiting South Africa, made stirring appeals for unity.²⁴ The N.I.A. and C.B. and S.I.A. eventually amalgamated on 8 October 1939.

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19. For more details see, I.A.P. (Minute and Agenda Book, C.B. and S.I.A., First Natal Provincial Conference, 31.12.1933 - 2.1.1934), Secretarial Report and Manifesto of C.B. and S.I.A.; India, Annual Report of the Agent of the Government of India in South Africa for the Year-ending 31st December 1933, 6-10; Pahad, 'The Development of Indian Political Movements', 113-134; Pachai, The South African Indian Question, 138; Mitha, 'Indian Minorities in South Africa', 174.
 20. Ginwala, 'Class, Consciousness and Control', 401; see also, Indian Views, 27.10.1939, 2.
 21. White, 'The Evolution of Policy, 1943-1948', 11.
 22. For more details see, Joshi, The Tyranny of Colour, 226.
 23. Pahad, 'The Development of Indian Political Movements', 150.
 24. I.A.P., S. Rustomjee, An Open Letter to Swami Bhawani Dayal: His Professions and Performances Revealed (Durban, Author, 1940), 3; see also, A True Story of the Unity Move. An Explanation and Exposure (Durban, N.I.A., 1940), 2-3; G.H. Calpin, A.I. Kaje: His Work for the South African Indian Community (Durban, Iqbal Study Group, n.d.), 57; Pachai, The South African Indian Question, 151; Palmer, The History of the Indians in Natal, 114; Indian Opinion, Editorial, 13.10.1939. Sir Sarvapalli Radhakrishnan was Professor of Oriental Philosophy at the University of Oxford and later became President of India.

The new body was called the Natal Indian Association.²⁵ But the parturition of the N.I.A. was not without its travail. The personality clashes, political intrigue, allegations and recriminations seemed to supersede the desire for unity. Some commentators, like Pachai²⁶ and White,²⁷ have looked at the discord cursorily. Pahad also examined the events leading to the formation of the N.I.A. but appears to be more concerned with the apparent chicanery of Kajee than the serious implications of the dispute.²⁸ A more detailed study of the manoeuvrings of the various politicians to assume leadership roles in the Indian community will provide a better insight into Indian politics in the succeeding years and explain the hollowness of what was presumed to be unanimity in the Indian community in 1939.

Sir Radhakrishnan's appeals had prepared the way for informal talks. These took place in the first instance between V.S.C. Pather, Sorabjee Rustomjee and A.I.Kajee. Thereafter discussions took place between V.S.C. Pather, S.R. Naidoo and Rustomjee on the one hand and Christopher, P.R. Pather, S.L.Singh and P.B. Singh²⁹ on the other culminating in draft proposals to amalgamate.³⁰ The choice of a name for the new organisation was to be left to Gandhi.

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25. This Association should not be confused with the N.I.A. formed by Gandhi in 1913 in opposition to the N.I.C. to fight for the repeal of the £3 tax. See, Mitha, 'Indian Minorities in South Africa', 122; Ginwala, 'Class, Consciousness and Control', 204; Rustomjee, An Open Letter to Swami Bhawani Dayal, 5.
 26. Pachai, The South African Indian Question, 151.
 27. White, 'The Evolution of Policy, 1943-1948', 11.
 28. Pahad, 'The Development of Indian Political Movements', 158-160.
 29. These were the leaders of the N.I.C. and C.B. and S.I.A. respectively. For details of their biography see, D. Bramdaw (Ed.), The South African Indian Who's Who and Commercial Directory, 1938-40 (Pietermaritzburg, The Natal Witness Limited, 1939).
 30. A True Story of the Unity Move, (1940), 4.

These delegates agreed to place the draft proposals before their respective organisations. Accordingly S.R. Naidoo forwarded the proposals to the N.I.C. headquarters as a notice of motion.³¹ A.I. Kajee supported the move maintaining that 'no price was too great for unity' and he was even keen to 'move its acceptance before a meeting of the members of the Congress.'³² Kajee also recommended that the issue should be localised and he proposed the name of Natal Indian Association rather than submitting the matter for Gandhi's decision.³³

Gandhi expressed disappointment at the change of the appellation of the Indian political organisation. He declared:

'To find out a name to be given to the new organisation perplexed me sorely. The name Congress, I knew was in bad odour with the conservatives in England and yet the Congress was the very life of India. I wanted to popularise it in Natal. It savoured of cowardice to hesitate to adopt the name...'³⁴

He recommended that the organisation should be called the Natal Indian Congress.

Further suggestions made by Kajee were: the constitution of the N.I.C. together with the amendments suggested by the C.B. and S.I.A. should be adopted as the constitution of the N.I.A.; that people on the membership registers of both the N.I.C. and the C.B. and S.I.A. be

31. Indian Opinion, 3.11.1939, 41.

32. A True Story of the Unity Move, (1940), 5.

33. A True Story of the Unity Move, (1940), 6.

34. Swami B. Dayal (Sannyasi), Abdulla Ismail Kajee (Pravasi-Bhawan, Ajmer, Author, 1941), 29.

constituted as membership of the new organisation.³⁵ At a Special Committee Meeting of the representatives from the N.I.C. and the C.B. and S.I.A. on 22 August 1939 the basis of unification was finalised with minor amendments to the original formula for unity.³⁶ The N.I.C. was to convene a Special General Meeting on the 27 August 1939 to ratify the unity formula.³⁷

But at this point Kajee resorted to tergiversation. He probably was under the impression, rightly or wrongly, that Sorabjee Rustomjee, S.R. Naidoo and V.S.C. Pather were colluding to oust him from the dominant position he had enjoyed in the N.I.C. for a considerable period of time.³⁸ Moreover the rivalry between Sorabjee Rustomjee and Kajee had increased in intensity and personal ambitions began to predominate over more important issues.³⁹ Kajee proposed that the Special General Meeting to ratify the unity formula be postponed until Swami Bhawani Dayal,⁴⁰ President of the N.I.C., returned from India.

35. Rustomjee, An Open Letter to Swami Bhawani Dayal, 4; see also, A True Story of the Unity Move, (1940), 6.

36. Indian Opinion, 3.11.1939, 412.

37. Ibid., 412.

38. Pahad, 'The Development of Indian Political Movements', 159.

39. Calpin, A.I.Kajee, 60.

40. A religious and political leader; staunch supporter of N.I.C. and A.I. Kajee; a noted Hindi scholar. For more details see, D. Bramdaw (Ed.), The South African Indian Who's Who and Commercial Directory, 1938-1940, 220.

It had become obvious that Kajee was now attempting to 'destroy the prospects of amalgamation.'⁴¹ In spite of his attempts to forestall the Special General Meeting it was duly held as scheduled on 27 August. It was decided that on 8 October 1939 the unity meeting should be held. On the eve of this amalgamation meeting a general meeting of the N.I.C. was requisitioned by fifty-three members who declared that the Special General Meeting of the N.I.C. held on 27 August was unconstitutional.⁴² The amalgamation meeting was not postponed despite the efforts of these N.I.C. members to get the Indian community to boycott it.

It seemed providential that Advocate A. Christopher, who had been instrumental in dividing the N.I.C. in 1933 when he formed the C.B. and S.I.A., should now preside at the meeting to unify the N.I.C. and the C.B. and S.I.A. into the N.I.A. General Smuts, Prime Minister of South Africa, congratulated the Indian community for healing the breach in its ranks. He expressed the hope that the settlement 'will be a good augury for the future and be a pointer to the solution of other problems and difficulties...'⁴³

Kajee and his coterie of supporters remained outside the N.I.A. and declared that despite the amalgamation the N.I.C. was still in existence. Kajee's attitude was probably motivated by petty jealousy, personal spite or communal differences.⁴⁴ He may not have been willing to accept the repudiation of his leadership by the larger body.⁴⁵ Whatever the reason,

41. Calpin, A.I. Kajee, 58.

42. A True Story of the Unity Move, (1940), 11; see also, Indian Opinion, Editorial, 13.10.1939.

43. A True Story of the Unity Move, (1940), 14-15.

44. Calpin, Indians in South Africa, 132.

45. Pahad, 'The Development of Indian Political Movements', 159.

his action reduced the unity to a farce.⁴⁶ The amalgamation of the C.B. and S.I.A. and the N.I.C. resulted in greater disunity than previously existing.⁴⁷

The N.I.C. had become an emasculated organisation with the N.I.A. enjoying majority support of the Indian community.⁴⁸ The N.I.A. also received official recognition by the Governments of the Union of South Africa and India.⁴⁹ But the Indian community was riven and handicapped once more by a lack of unanimity in the ranks of its political organisations. It was in this turbid state that the community had to face the increasing staccato of the cry of 'Indian penetration' in 1940.

In Durban the 'troubled peace'⁵⁰ of the 1930s slowly gave way to a declared policy of antagonism towards the Indians by Whites mainly in regard to the Indian acquisition and occupation of property in predominantly European residential areas. The Durban City Council was in the forefront of the agitation. In terms of the Durban Alienation Ordinance No. 14 of 1922, Ordinance 19 of 1924 and Ordinance 12 of 1933, anti-Asiatic clauses and other restrictions had already been imposed on the purchase of property by Indians in certain areas. In 1935 the Durban

46. Dayal, Abdulla Ismail Kajee, 36.

47. Ibid., 36; See also, Indian Views, 27.10.1939, 3.

48. Pahad, 'The Development of Indian Political Movements', 160.

49. White, 'The Evolution of Policy, 1943-1948', 11.

50. Palmer, The History of the Indians in Natal, 114.

City Council wrote to the Administrator pleading for further protective legislation against 'Indian penetration'.⁵¹ The D.C.C. informed the Administrator that from 1930 to 1934 212 transfers of property from Europeans to Asiatics had been effected in Durban.⁵²

By 1939 some City Councillors, notably S.M. Pettersen and Mrs Vera Burnside, took the lead in fanning the anti-Indian agitation in Durban. Councillor Pettersen wanted the City Council to approach the Government or Provincial Council to introduce legislation to prevent Indians and other non-Europeans from purchasing properties and land in European localities on lines similar to that which applied to Blacks.⁵³ Mrs Burnside expressed alarm at the continued 'penetration' of Indians into purely European residential areas. At a Council meeting she moved that: '...a Committee should be appointed to enquire into the extent of penetration and the best methods to curtail and prevent such penetration in the future.'⁵⁴

The N.I.A opposed the policy of segregation suggested by the Councillors. They rejected allegations of 'Indian penetration' generally as 'unfounded and baseless' claiming that Indian acquisition of property was hardly cause for concern. They indicated that after a period of some eighty years, 88 226 Indians owned rateable property valued at £4 000 000 against a total valuation of £48 998 500.⁵⁵

51. N.A., Vol.71, File 527(1) (D.C.C.,T.C.O.), The Town Clerk, Durban - The Provincial Secretary, 16.5.1935, 3.

52. Ibid., 2.

53. Minutes of the Durban City Council, 10.11.1939, 194.

54. Ibid., 194-195; see also, Indian Opinion, 1.12.1939, 441.

55. N.A, Vol.71, File 527(2) (D.C.C.,T.C.O.), N.I.A. - The Town Clerk, Durban, 16.10.1939.

The Minister of the Interior, H.G. Lawrence, met the D.C.C. on 24 October 1939. He suggested the possibility of co-operation between the Indian community and the Council on non-statutory lines.⁵⁶ He emphasised the avowed opposition of the Indian community to any statutory legislation on the question of segregation. This strategy was probably the result of Smuts' pragmatism. He did not wish to 'disturb public opinion in an unsettled and strategically important India.'⁵⁷

Nevertheless at the meeting Lawrence remarked that, prima facie, the D.C.C. had a strong case, but 'there was no authoritative finding of facts with regard to penetration.'⁵⁸ He considered the appointment of a 'Fact Finding Enquiry' conducted by the Department of the Interior as vitally necessary. Some two months later the D.C.C. informed Lawrence that the problem of 'Indian penetration' was growing worse because from 1 August 1937 to 31 July 1939 some 140 properties were acquired from Europeans by Indians in the Old Borough of Durban.⁵⁹

Lawrence replied to the D.C.C. pointing out that the N.I.A. was not averse to the suggestion of co-operation in regard to the 'penetration' issue on non-statutory lines.⁶⁰ The N.I.A. gave an assurance

56. N.A., Vol. 71, File 527(9) (D.C.C., T.C.O.), Memorandum to Durban City Council's Deputation to interview His Honour the Administrator and the Hon. The Minister of the Interior, Indian Penetration, 11.11.1942, 1; see also, N.A., Trunk 0433 (D.C.C., T.C.O.), Council-in-Committee Meeting, Durban City Council, 24.10.1939, 2082.

57. White, 'The Evolution of Policy, 1943-1948', 14 and 14, f/n. 39; see also, Calpin, Indians in South Africa, 133.

58. Council-in-Committee Meeting, Durban City Council, 24.10.1939, 2083.

59. N.A., Vol. 71, File 527(2) (D.C.C., T.C.O.), The Town Clerk, Durban - The Secretary for the Interior, 5.12.1939.

60. Minutes of the Durban City Council, 12.1.1940, 650-651.

to do everything in their power to dissuade Indians from purchasing property in a predominantly European residential area. The N.I.A. wanted to establish more cordial relations between the Indian and European communities. They had accepted the suggestion of the Minister that a sub-committee should be appointed to work in close co-operation with the Housing Committee of the Durban City Council.⁶¹

This offer of co-operation from the N.I.A. was at first rejected by the D.C.C. The Council referred to the lack of co-operation on the part of the N.I.C. in the past. This led the Council to conclude that 'no good purpose would be served by agreeing to the proposal of the Natal Indian Association....'⁶² The Minister however prevailed upon the Mayor to use his influence in persuading the Council to co-operate with the Government.⁶³ He appealed to the City Council 'to give a fair trial to the scheme for the establishment of a Joint Committee.'⁶⁴ The matter was discussed further with the Minister by a City Council deputation on 18 January 1940.⁶⁵

Subsequently, after a Cabinet meeting it was announced that a Commission was to be appointed to enquire into the question of 'penetration'. In the meantime a 'standstill' agreement had been

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- 61. Indian Opinion, 9.2.1940, 50; see also, Statement on Alleged Indian Penetration (Durban, N.I.A., n.d.), 4-5; Indian Views, 16.2.1940, 7.
 - 62. Minutes of the Durban City Council, 12.1.1940, 652.
 - 63. N.A., Vol. 71, File 527(2) (D.C.C., T.C.O.), Telegram: The Minister of the Interior - R. Ellis-Brown, Mayor of Durban, 11.1.1940; see also, Indian Views, 19.1.1940, 7.
 - 64. N.A., Vol. 71, File 527(2) (D.C.C., T.C.O.), H. Lawrence - R. Ellis-Brown, Esq., Mayor of Durban, 11.1.1940.
 - 65. The Natal Mercury, 18.1.1940; see also, Indian Views, 19.1.1940, 7.

reached with the Indian community.⁶⁶ This was to ensure that the status quo regarding the acquisition of property by Indians in European areas was maintained until the findings of the Commission were published.⁶⁷ In the light of these developments the D.C.C. welcomed the proposal of a Judicial Commission of Enquiry. It agreed to co-operate on a Joint Committee.⁶⁸ The Council appointed the Mayor, Councillor R. Ellis-Brown and Councillors H.G.Capell, T. Kinloch, W.E.Knight, D.G. Shepstone and J.M.Harris as its representatives on the Committee at its meeting on 26 January 1940.⁶⁹

On their part the N.I.A. convened a mass meeting on 11 February 1940 in order to confirm the terms of the assurance.⁷⁰ The action of the N.I.A. was strongly condemned by such persons as Manilal Gandhi, C.I. Amra, M.I. Timol, G. Ponen, H.A.Naidoo and Dr G.M. Naicker⁷¹ as well as by others on the grounds 'that they were opposed to the principle of segregation and the assurance amounted to a voluntary submission to that principle.'⁷² Despite the strong opposition of the 'Nationalist Bloc' of the N.I.A., the assurance was ratified.⁷³ At a Committee Meeting

66. The Natal Daily News, 19.1.1940.

67. A1/Dg (Hofmeyr Papers), Statement to the Press by the Agent-General, 25.3.1940; see also, The Natal Mercury, 25.3.1940; N.A., Vol.71, File 527(2) (D.C.C., T.C.O.), Extract from Report of Town Clerk, submitted to General Purposes Committee, 23.1.1940.

68. N.A., Vol.71, File 527(2) (D.C.C., T.C.O.), Extract from Minutes of General Purposes Committee, 23.1.1940.

69. Indian Views, 2.2.1940, 4; see also, The Natal Mercury, 14.3.1940. The Minister was informed of this decision as per letter, N.A., Vol.71, File 527(2) (D.C.C., T.C.O.), The Town Clerk, Durban - The Secretary for the Interior, 31.1.1940.

70. Indian Views, 16.2.1940, 7.

71. These were some of the members of the 'Nationalist Bloc', i.e., radical group, of the N.I.A.

72. Indian Opinion, 16.2.1940, 64.

73. Indian Views, 16.2.1940, 7.

of the N.I.A. on 17 February 1940 the N.I.A. representatives on the Joint Committee were elected . They were: A. Christopher, J.W. Godfrey, A.S. Kajee, P.B. Singh, Sorabjee Rustomjee, P.R. Pather, and A.M.M. Lokhat (as alternate member).⁷⁴

The terms of reference of the Joint Committee were conveyed by telegram by the Minister of the Interior to the D.C.C. The Committees appointed by the D.C.C. and by the N.I.A. respectively were to co-operate by joint consultation to prevent Indians from acquiring or occupying property in predominantly European areas. The Committee was to consider other related matters as well.⁷⁵ Lawrence was sanguine that he had achieved his objective to get the D.C.C. and the Indian community to consult with one another hoping to extend the experiment to other areas.⁷⁶ This 'Indian Penetration Committee' was named the 'Lawrence Committee' at the inaugural meeting held on 14 March 1940.⁷⁷ The Principal Immigration Officer for Durban, H. Geake, deputised for the Minister⁷⁸ who was unable to attend.⁷⁹

74. Indian Opinion, 23.2.1940, 70; see also, The Natal Mercury, 14.3.1940.

75. N.A., Vol. 71, File 527(2) (D.C.C., T.C.O.), Telegram: The Minister of the Interior - His Worship, The Mayor of Durban, 20.1.1940.

76. N.A., Vol. 71, File 527(3) (D.C.C., T.C.O.), Minutes of the Inaugural Meeting of the Joint Committee Established by the Durban City Council and the Natal Indian Association at the request of the Honourable the Minister of the Interior, held 14.3.1940, 8.

The Natal Daily News criticised the nomenclature 'Indian Penetration Committee' rightly pointing out: 'Such a name suggests that the verdict has been returned before the inquiry has begun and that "penetration" into European areas on a scale sufficient to justify Government interference has been taken for granted.' Indian Opinion, 15.3.1940, 3.

77. The Natal Mercury, 14.3.1940.

78. N.A., Vol. 71, File 527(2) (D.C.C., T.C.O.), The Town Clerk, Durban - The Principal Immigration Officer, Durban, 28.2.1940.

79. N.A., Vol. 71, File 527(3) (D.C.C., T.C.O.), Telegram: The Minister of the Interior - The Mayor of Durban, 5.3.1940.

Commentators have not discussed the work of the Lawrence Committee in detail. Pachai has given an extremely general account of the inauguration and demise of the Committee.⁸⁰ Pahad turned his attention to the opposition of the radical group to Indian involvement in the war. He refers briefly to the reaction of the 'Nationalist Bloc' of the N.I.A. and to the controversy surrounding Kajee's attitude to the assurance of the N.I.A.⁸¹ White has given an overview of the formation and opposition to the Lawrence Committee.⁸²

A brief reference to the Lawrence Committee, insofar as the question of 'Indian penetration' is concerned, is inadequate. The Committee had been conceived as the means of promoting harmonious relations in Durban.⁸³ For the first time in Durban, except perhaps for the 'Kajee Assurance', the City Council and the Indian community were going to discuss the mutual interests of Europeans and Indians based on 'voluntary co-operation and goodwill'.⁸⁴ It was considered a new approach to the solution of the Indian 'problem' along non-statutory lines.⁸⁵ The success of the Committee would obviate the need for legislation demanded by the various local authorities.⁸⁶ The N.I.A.

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80. Pachai, The South African Indian Question, 158-159; passim: 153, 163, 175, 177, 180.
81. Pahad, 'The Development of Indian Political Movements', 161.
82. White, 'The Evolution of Policy, 1943-1948', 16-18.
83. Kondapi, Indians Overseas, 1838-1949, 265.
84. N.A., Vol.71, File 527(8) (D.C.C., T.C.O.), Press Statement by the Hon. The Minister of the Interior (Mr H.G. Lawrence, K.C.), Indian Penetration, n.d. [24.5.1942].
85. Indian Opinion, 16.2.1940, 64.
86. N.A., Vol.37, File 174(12) (D.C.C., T.C.O.), N.M.A., Record of Proceedings at the First Quarterly Meeting of the Executive, Pietermaritzburg, 18.12.1942, 4-5; see also, N.A., Vol.71, File 527(9) (D.C.C., T.C.O.), Telegram: The Town Clerk, Durban - The Secretary for the Interior, 6.11.1942.

also hoped that through the Committee the D.C.C. could be made aware of the serious need for Indian housing⁸⁷ as the question of housing and civic amenities would be central to the discussion of the Committee.⁸⁸

While the N.I.A. saw the Committee as a positive step, the radical group in the Indian community considered participation on the Lawrence Committee a 'self inflicted slur and stigma on the name of the Indian community...'⁸⁹ According to Mabel Palmer the European press heightened the unpopularity of the N.I.A assurance among the Indian community by representing the 'move as the acquiescence by the Indians in a segregation policy.'⁹⁰

Indian Views construed the assurance of the N.I.A and their willingness to co-operate on the Lawrence Committee as a volte-face. The N.I.A. leadership a short while previously had maintained that it was 'a crime and a sacrilege against the honour of India to accept the principle of segregation in any shape or form.'⁹¹ They had pledged their moral support and had advocated passive resistance in the Transvaal against the Asiatics (Transvaal Land and Trading) Act, 1939, which impinged upon the prerogative of Indians to occupy land and to trade.⁹²

87. Calpin, Indians in South Africa, 148.

88. Statement to the Press by the Agent-General, 25.3.1940.

89. Indian Opinion, 16.2.1940, 64.

90. Palmer, The History of the Indians in Natal, 117; see also, Swami B. Dayal (Sannyasi), Penetration Assurance and Segregation (Durban, N.I.C., 8.3.1940), 2-3. For a further copy see, Indian Views, 8.3.1940, 9-11. See also comments in similar vein made by D.Y. Dev, 'What India thinks of the "Assurance of the Natal Indian Association", in Supplement to the Indian Views, 26.4.1940; and I.A.P. (Minute and Agenda Book, N.I.C., Second Conference, 25.8.1940).

91. Indian Views, 19.1.1940, 1; see also, Dayal, Abdulla Ismail Kajee, 40.

92. Joshi, The Tyranny of Colour, 265.

The assurance given by the N.I.A. became the subject of even more intense vituperation when the N.I.C. attempted to refute the comment made by Sorabjee Rustomjee about the 'Kajee Assurance' or the 'Gentlemen's Agreement'. At the meeting convened by the N.I.A. on 11 February 1940 to ratify the N.I.A. assurance, Rustomjee in moving the resolution for acceptance stated that the arrangement was not novel and had been originally negotiated by Kajee.⁹³ This viewpoint was endorsed by the Minister who stated that the N.I.A. assurance was 'substantially and effectively similar to that given by the Natal Indian Congress to the Natal Municipal Association...'⁹⁴ This earlier assurance was not formally reduced to writing and that was the reason for its being referred to as the 'Gentlemen's Agreement'.⁹⁵

In 1936 Kajee had agreed to a suggestion made by the Minister of the Interior, J.H. Hofmeyr, to come to some mutual agreement regarding amenities for the Indian and European communities in urban areas.⁹⁶ Later an invitation had been extended to Kajee to discuss the matter confidentially with the Natal Municipal Association (N.M.A.).⁹⁷

93. Indian Views, 16.2.1940, 7 and 1.3.1940, 11.

94. N.A., Vol.71, File 527(3) (D.C.O., T.C.O.), Telegram: The Minister of the Interior - The Mayor of Durban, 5.3.1940.

95. Statement to the Press by the Agent-General, 25.3.1940.

96. N.A., Vol.37, File 174(2) (D.C.C., T.C.O.), N.M.A. - A.I. Kajee, 25.6.1936.

97. Ibid. The N.M.A. is the Association of Municipal and other Local Authorities in Natal.

Subsequent to an informal discussion held between W.T. Walker, Secretary of the N.M.A., and representatives of the Congress at Kajee's residence, the N.I.C., in a letter expressed their anxiety to appoint representatives for a round table discussion with the N.M.A. concerning Indian penetration.⁹⁸ The arrangement between the N.M.A and the Congress was that the former would bring to the notice of the N.I.C. any attempt by an Indian to purchase property in European residential areas. The N.I.C. would endeavour to dissuade the person from such a transaction.⁹⁹ This understanding came to be regarded as the 'Kajee Assurance'.

The N.I.A. argued therefore that it merely 're-affirmed' the 'Kajee Assurance' because when it was given the C.B. and S.I.A. were not incorporated with the N.I.C.¹⁰⁰ It was necessary for the new body, i.e., the N.I.A., to honour the agreement of the N.I.C. It becomes quite obvious that the allegations and denials surrounding both the 'Kajee Assurance' and the N.I.A. assurance to participate on the Lawrence Committee turned on technicalities. The crux of the matter was that the

98. H.Maghranj and A. Moosa, Segregation with Co-operation (Durban, Authors, 1940), 16.

99. Statement on Alleged Indian Penetration, (N.I.A., n.d.), 2; see also, reference made by Hofmeyr in his speech 4.5.1939 on the Transvaal Asiatics Land and Trading Bill to this arrangement, Ibid., 1-2.

100. Statement on Alleged Indian Penetration, (N.I.A., n.d.), 7.

N.I.A. justification of ratifying the 'Kajee Assurance' sounded hollow. Rustomjee had roundly condemned the 'Kajee Assurance' in February 1939.¹⁰¹ The splinter groups indulged in a fruitless controversy¹⁰² and the N.I.A. most certainly weakened its case by hiding behind the 'Kajee Assurance'.¹⁰³

The militant element in the Indian community was dismayed¹⁰⁴ and the N.I.A. attempt at co-operation was vilified as 'one of the most ignominious acts in the history of Indians in South Africa.'¹⁰⁵ The N.I.C. repudiated the undertaking of the N.I.A. given to the Minister, declared the whole question sub judice because of the Judicial Commission and contended that the N.I.A. had no right or mandate to represent the Indian community.¹⁰⁶ The Non-European United Front, an organisation opposed to segregation, also repudiated the assurance of the N.I.A. stating that the assurance given to the Government and the Durban City Council 'are binding only to those organizations which give it.'¹⁰⁷

101. Maghrajh and Moosa, Segregation with Co-operation, 5.

102. Joshi, The Tyranny of Colour, 266.

103. Ibid., 266.

104. Pahad, 'The Development of Indian Political Movements', 161.

105. Indian Opinion, Editorial, 8.3.1940, 86.

106. N.A., Vol. 71, File 527(2) (D.C.C., T.C.O.), Record of Meeting of the Committee of the N.I.C. held on Sunday 18th February, 1940; see also, N.A., Vol. 71, File 527(3) (D.C.C., T.C.O.), N.I.C. - The Town Clerk, Durban, 13.3.1940, 1; The Natal Mercury, 19.2.1940; Indian Opinion, 23.2.1940, 74.

107. N.A., Vol. 71, File 527(4) (D.C.C., T.C.O.), Hon. Secretary, Non-European United Front - The Town Clerk, Durban, 21.4.1940.

It was in this comfortless and acrimonious atmosphere that the N.I.A. representatives on the Lawrence Committee set to work. Councillor D.G. Shepstone attempted to inject some optimism at the inaugural meeting. He commented:

'...the Committee...has within it the germ which, if properly nurtured and developed, may provide the way to a solution of the position which is exercising the minds at the present time of both Europeans and Indians alike.' 108

By the end of May 1940 the Committee had dealt with some 33 cases in five meetings.¹⁰⁹ The motive in each case of intended acquisition

108. N.A., Vol. 71, File 527(3) (D.C.C., T.C.O.), Joint Committee Established by the Durban City Council and the Natal Indian Association at the Request of the Honourable the Minister of the Interior, Inaugural Meeting, 14.3.1940, Annexure, D.G. Shepstone, Some observations on Indian Penetration, 11.3.1940, 1.

109. The dates of the Meetings were:
 March 14, 19, 27; April 4, 18.
 Of the cases dealt with:
 (a) 21 acquisitions prior to 14.3.1940 were outside the terms of reference of the Lawrence Committee;
 (b) 3 cases were false claims;
 (c) 7 cases were intended acquisitions in which the Committee successfully achieved its objectives in 6 cases with 1 pending;
 and (d) 2 cases were under consideration as to whether they were within the purview of the Committee.
 N.A., Vol. 71, File 527(5) (D.C.C., T.C.O.), Memorandum by Indian Representatives on Lawrence Committee in regard to Provision of Choice Residential Sites, 29.5.1940, 2. For a further copy of the memorandum see, Minute and Agenda Book, N.I.C., 25.8.1940.

was 'a desire to live in a decent locality where not only better environments but also civic amenities are available.' ¹¹⁰ The Indian representatives maintained that their co-operation on the Committee was dictated by an earnest desire to remove friction between the European and Indian communities. How seriously the European representatives took the Lawrence Committee is shown by the frivolous enquiry by H.G. Capell, a City Council representative. He wished to know whether any cemetery sites had been transferred from a European to an Indian. ¹¹¹ Moreover the Indian representatives complained that the Council seemed to ignore repeated requests for consultations regarding details of housing schemes for Indians. No tangible effort had been made by the Council in respect of housing needs, choice sites and civic amenities. The Lawrence Committee did not appear to be functioning as smoothly as had been hoped. ¹¹²

On 7 November 1940 the Minister of the Interior met with members of the Committee to clarify some points related to the activities of the Lawrence Committee. ¹¹³ He remarked that although he was not disappointed with the Committee he was aware that the machinery set up had not been working as harmoniously as anticipated. He appealed for a

110. Memorandum by Indian Representatives on Lawrence Committee, 29.5.1940, 2.

111. Ibid., 3.

112. See, N.A., Vol. 71, File 527(6) (D.C.C., T.C.O.), Memorandum to the Town Clerk, Lawrence Committee: Memorandum by Natal Indian Association, 23.9.1940, for the Council's attitude to requests made by N.I.A.

113. N.A., Vol. 71, File 527(8) (D.C.C., T.C.O.), Report of Meeting between Minister of Interior and Members of Lawrence Committee, 7.11.1940, 1.

spirit of co-operation.¹¹⁴ It was interesting to note that the full Lawrence Committee had inspected in loco certain sites for Indians. Afterwards the Council's representatives submitted a report to the Council rejecting these sites. The Minister drew the attention of the members to this incident and chided the White representatives for having made no alternative suggestions. He concluded that, prima facie, the Indian community had a legitimate grievance.¹¹⁵

Shepstone's comment that the 'country had been committed so far as European opinion was concerned, to a policy of segregation'¹¹⁶ crystallised the negative attitude of the Council. Rustomjee claimed that the spirit of co-operation which the Minister appealed for, after eight months, seemed to come from the Indian representatives alone.¹¹⁷ Advocate Christopher was critical of the unilateral decision of the European members of the Committee and their disrespect in not discussing their recommendations concerning the sites inspected with the Indian members of the Committee before submitting them to the Council.¹¹⁸

The Council's representatives argued that the sites which they had inspected should be preserved for European residents. They maintained

114. Ibid., 4.

115. Ibid., 3.

116. Ibid., 6.

117. Ibid., 13.

118. Ibid., 25.

it was 'the moral, if not the legal, duty' ¹¹⁹ of the Council to do so because of Whites living in close proximity to the areas. ¹²⁰ They concluded:

'To accede to the representations which have been made would involve the Council in a breach of this duty which, in the particular circumstances and in so far as these particular areas are concerned, is in the view of the Committee a larger duty than any which the Council might owe to the Indian community of the City.'¹²¹

The upshot of the matter was that arising out of the interview with the Minister it had become quite obvious that the Council was bent on segregation. The Council's representatives had treated with scant regard the ambitions for choice sites of the Indian community. As such, there could be little doubt as to the future of the Lawrence Committee.

The hope expressed by the Minister at the beginning that the Lawrence Committee would find a solution to the problem of 'Indian penetration' in Durban was turning to despair. ¹²² He nevertheless wanted the Committee to continue to function until the Judicial

119. Minutes of the Durban City Council, 22.11.1940, 190.

120. The areas in question were:

- (a) A block of approximately 11 acres to the south-west of Howard College between the Reservoir and Grosvenor Road;
- (b) An area in the Stella bush lying between (a) and the Cemetery;
- (c) An area under bush near to Burman Drive;
- (d) Kirkwood Avenue - Fir Lane (opposite to South African Railways Locomotive Running Shed).

Ibid., 190.

121. Ibid., 190.

122. Minutes of the Council-in-Committee, Durban City Council, Interview with Minister of the Interior and Public Health, 31.7.1941, 2132.

Commission had completed its task. But the Committee was slowly becoming moribund. At the inaugural meeting the decision had been taken to meet every Wednesday evening.¹²³ The frequency of the meetings declined rapidly. On 5 April 1941 the N.I.A. reminded the Town Clerk that the last meeting of the Lawrence Committee had been held on 7 November 1940 when the Minister was present.¹²⁴ The Legal Assistant to the Town Clerk laconically commented that normal meetings of the Lawrence Committee should be resumed.¹²⁵ But still no meeting was convened.

On 28 November 1941 the Acting Principal Immigration Officer (Province of Natal) requisitioned a report from the Town Clerk, Durban, on the working of the Lawrence Committee. He also wanted the Committee to consider whether any purpose would be served in submitting a petition concerning the acquisition of a property in Avondale Road by an Indian.¹²⁶ In reply the Council pointed to the inherent weakness of the Committee that it did not receive 'timeous information of intended acquisitions.'¹²⁷ The Council also expressed the opinion that until the Lawrence Committee was authorised 'over and above the powers of persuasion' no useful purpose could be served by it.¹²⁸ The D.C.C. accordingly requested the Minister to grant the Lawrence Committee statutory powers.¹²⁹

123. Minutes of the Inaugural Meeting of the Joint Committee..., 14.3.1940, 9.

124. N.A., Vol. 71, File 527(7) (D.C.C., T.C.O.), N.I.A. - The Town Clerk, Durban, 5.4.1941.

125. N.A., Vol. 71, File 527(7) (D.C.C., T.C.O.), Note: W.L. Howes, 9.4.1941.

126. Minutes of the Durban City Council, 22.12.1941, 470. The House was 317 Avondale Road, Durban.

127. Ibid., 471.

128. Ibid., see also, The Natal Mercury, 20.12.1940.

129. Minutes of the Durban City Council, 22.12.1941, 471.

The Council's resolutions made the intentions of the D.C.C. plain: legislation for segregation. The N.I.A. reacted sharply. They denied any knowledge of the penetration mentioned and felt strongly that a meeting of the whole Lawrence Committee ought to have been convened and a joint decision handed down to the Acting Principal Immigration Officer.¹³⁰ The unilateral decision of the Council once more revealed the disdain with which it treated Indian representatives on the Committee. By such action they made a travesty of the spirit of co-operation offered by the N.I.A.

The Lawrence Committee had ceased to function. Lawrence met the Council's representatives on 22 May 1942 to discuss the situation¹³¹ and the full Committee on 24 May 1942. The Council's representatives insisted that the lack of success of the Committee was to be attributed to the fact that it had no statutory powers.¹³² Christopher warned that the granting of statutory powers to the Lawrence Committee would add a new dimension to the whole situation.¹³³ He advised that the Committee 'should be given another trial.'¹³⁴

130. N.A., Vol. 71, File 527(7) (D.C.C., T.C.O.), N.I.A. -The Town Clerk, Durban, 22.12.1941, 2.

131. N.A., Vol. 71, File 527(8) (D.C.C., T.C.O.), Minutes of Meeting of City Council's Representatives on Lawrence Committee, 22.5.1942, 1.

132. N.A., Vol. 71, File 527(8) (D.C.C., T.C.O.), Minutes of Lawrence Committee, 24.5.1942, 1.

133. Indian Views, 19.6.1942, 1; see also, N.A., Vol. 71, File 527(8) (D.C.C., T.C.O.), Press Statement by the Hon. The Minister of the Interior (Mr H.G. Lawrence, K.C.), Indian Penetration, n.d. [24.5.1942], 1.

134. Minutes of Lawrence Committee, 24.5.1942, 2.

The Minister mollified both sides and was encouraged by the 'spirit of friendly co-operation and goodwill.'¹³⁵ Although the Mayor, Councillor R. Ellis-Brown, expressed his willingness to resuscitate the Lawrence Committee he expressed scepticism at its success without statutory powers: 'The powers of persuasion were useless unless the Committee had some definite authority to work on.'¹³⁶

At the first meeting after the interview with the Minister the Lawrence Committee discussed the question of legislative authority, despite the Minister's refusal to grant it statutory powers.¹³⁷ J.H.Basson, Commissioner for Immigration and Asiatic Affairs, intervened in the discussion to remind the Committee that they should implement the wishes of the Minister¹³⁸ and to continue the function of the Lawrence Committee as a non-statutory body.¹³⁹ The meeting adjourned to allow the N.I.A. to consider certain proposals.

When the meeting reconstituted itself on 13 July 1942, it was decided that: the Lawrence Committee should continue its function as a non-statutory body; the personnel should be reduced from twelve to six members; the members were to be nominated by the Minister from a list of six names of D.C.C. representatives and six names of N.I.A. nominees.¹⁴⁰ The D.C.C. had to ratify these recommendations of the Committee

135. Ibid., 2.

136. Ibid., 2.

137. N.A., Vol. 71, File 527(8) (D.C.C., T.C.O.), Minutes of Lawrence Committee, 6.7.1942, 1.

138. Ibid., 2.

139. Minutes of the Durban City Council, 7.8.1942, Report of City Council's Representatives on Lawrence Committee, 30.7.1942, 1553.

140. N.A., Vol. 71, File 527(8) (D.C.C., T.C.O.), Extract of Minutes from Lawrence Committee, 13.7.1942, 2.

by a majority of two-thirds of the Councillors present. At its meeting on 7 August 1942 this majority was not obtained and consequently the recommendations fell away.¹⁴¹ The Councillors who voted against the recommendations were adamant that 'without statutory powers or some statutory provision which would ensure timeous notice of intended acquisitions being given to the Committee, it could not possibly achieve any useful result.'¹⁴²

The Minister expressed regret at the Council's decision but maintained that he would not consider granting statutory powers to the Lawrence Committee.¹⁴³ The D.C.C. did not appoint any members of the Council to the Committee.¹⁴⁴ As a result the experiment at co-operation and conciliation was finally abandoned.

There can be little doubt that in the initial stages there was harmony between the representatives of the D.C.C. and the N.I.A. The Legal Assistant to the Town Clerk, Durban, affirmed that there was no room for criticism of the spirit in which both sides had entered into the work of the Committee.¹⁴⁵ The Indian representatives had executed their tasks as diligently as they possibly could. Councillor T. Kinloch, representative of the D.C.C. on the Lawrence Committee, moved a resolution on 18 April 1940 to the effect that 'this Committee

141. N.A., Vol. 71, File 527(8) (D.C.C., T.C.O.), The Town Clerk, Durban - The Secretary for the Interior, 11.8.1942, 1.

142. *Ibid.*, 1.

143. N.A., Vol. 71, File 527(8) (D.C.C., T.C.O.), The Secretary of the Interior - The Town Clerk, Durban, 2.9.1942.

144. Minutes of the Council-in-Committee, Durban City Council, 15.10.1942, 2192.

145. N.A., Vol. 71, File 527(4) (D.C.C., T.C.O.), Memorandum to Town Clerk re Lawrence Committee, 1.5.1940, Annexure, Notes on the Lawrence Committee, 1.

places on record its appreciation of the assistance rendered by the Indian Representatives of the Committee in investigating and reporting on the cases submitted to this Committee from time to time.'¹⁴⁶ The Lawrence Committee had been constituted to prevent Indians from purchasing residential properties from Whites.¹⁴⁷ The representatives of the N.I.A. were able to achieve a modicum of success¹⁴⁸ in this regard, but as Calpin comments, 'Total success could hardly be expected.'¹⁴⁹ While some Indians stubbornly refused to brook any interference in their affairs, others allowed the N.I.A. to intercede, provided alternative sites were made available by the Council.¹⁵⁰ Nonetheless, the Indian representatives on the Lawrence Committee endeavoured to avoid racial antagonism and irritation and therefore devoted themselves with single-minded purpose to allaying the fears of the Whites.¹⁵¹

At a later stage the Council's representatives began to take unilateral decisions submitting reports to the Council without consulting the Indian representatives. This was the beginning of the Durban City Council's sabotage of the Lawrence Committee.¹⁵² Further, the Lawrence Committee was required to consider housing schemes, provision of civic

146. Memorandum by Indian Representatives on Lawrence Committee, 29.5.1940, 2-3.

147. G.C.Oosthuizen and J.H. Hofmeyr, A Socio-Religious Survey of Chatsworth (Durban, Institute for Social and Economic Research, University of Durban-Westville, 1979), 8.

148. Palmer, The History of the Indians in Natal, 117.

149. Calpin, Indians in South Africa, 152.

150. Ibid., 152.

151. A. Choudree and P.R.Pather, A Commentary on the Asiatic Land Tenure and Indian Representation Act and a Short Survey of the Indian Question in South Africa (London, S.A.I.C., 1946), 6.

152. Ibid., 6

amenities in Indian areas and the demarcation of choice building sites for the Indian community.¹⁵³ The Minister had regarded the consideration of housing by the Committee as being fundamental to the whole arrangement.¹⁵⁴ But the D.C.C. remained apathetic to the promptings of the Lawrence Committee with regard to Indian housing and civic amenities.¹⁵⁵

The Council's reasons for the failure of the Lawrence Committee could be summarised as the narrowness of the terms of reference, uncertainty of timeous information concerning proposed acquisitions of property by Indians from Europeans and the lack of concrete powers for the Committee.¹⁵⁶ The Council wanted the Committee to deal not only with 'intended' acquisitions but also 'completed acquisitions...or cases of the occupation of property not accompanied by a change in ownership.'¹⁵⁷

Although notices were published, land and estate agents circularised and the co-operation of attorneys and conveyancers sought, the objective of commanding timeous information was not achieved and constituted an inherent defect in the functioning of the Lawrence Committee.¹⁵⁸ But the Lawrence Committee really foundered on the City Council's incessant demands for statutory powers. The lack of sanction of public opinion

153. N.A., Vol. 71, File 527(5) (D.C.C., T.C.O.), Memorandum to the Chairman and Members of the Judicial Commission, presented by Secretary of the Lawrence Committee, n.d., 5.

154. N.A., Vol. 71, File 527(8) (D.C.C., T.C.O.), Meeting between Minister of the Interior and Members of Lawrence Committee, 7.11.1940, 2.

155. Calpin, Indians in South Africa, 152; see also, Palmer, The History of the Indians in Natal, 117.

156. Indian Views, 2.8.1940, 11.

157. Memorandum to the Town Clerk re Lawrence Committee, 1.5.1940, Annexure, Notes..., 1.

158. Ibid., 3.

held in camera, the fact that no concrete powers for the Committee were forthcoming from the Government ¹⁵⁹ and that the Indian members were averse to securing statutory powers to restrict the purchase of property ¹⁶⁰ resulted in the City Council withdrawing its representatives ¹⁶¹ in protest against the Committee's ineffectiveness. ¹⁶²

It is difficult to avoid the conclusion that the Lawrence Committee was not a conspicuous success. ¹⁶³ For Smuts it was a calamity. ¹⁶⁴ It was the harbinger of legislation to restrict the rights of Indians in South Africa and the resurgence of a volatile relation with India which had plagued him like a suppurating sore for the past quarter of a century. He saw himself in an invidious position. A quarrel with India was more than a nuisance. He perceived in the deteriorating relations with India a danger to the Commonwealth and to his own country. ¹⁶⁵

For the Indian community it marked a turning point in their affairs ¹⁶⁶ because thenceforth Whites rejected any offers of voluntary arrangements concerning residential juxtaposition of Europeans and Indians and the acquisition of property by Indians in predominantly European areas. Whites in Durban became more vociferous in their demands

159. Ibid., 4.

160. The Leader, 11.7.1942, 1.

161. Union of South Africa, The Indian in South Africa (Pretoria, The State Information Office, n.d.), 17.

162. J. Lawrence, Harry Lawrence (Cape Town, David Philip, 1978), 149.

163. Indian Penetration: Labour's Plan (Durban, South African Labour Party, n.d.), 5.

164. Hancock, Smuts: The Fields of Force: 1919-1950, 459.

165. Ibid., 459.

166. Calpin, Indians in South Africa, 153.

for legal restrictions to control transactions in immovable property between Indians and Europeans. In short, they wanted segregatory legislation. In order to gain time and possibly 'extinguish the demagogic fires by a cold douche of fact' ¹⁶⁷ a Judicial Commission of Enquiry under the Chairmanship of Justice F.N.Broome was appointed. We shall examine the work of the Commission in the next chapter.

In concluding this chapter two issues are salient. The first is that Indian political development was hamstrung by a morass of petty jealousies and personal ambitions, of irrelevant invective and diatribe. It was in this milieu of internecine strife and bickering that the Natal Indian Association came into being.

The second was the statesmanlike effort made by H.G.Lawrence, the Minister of the Interior, to get the Durban City Council and the Indian community around the table to discuss mutual interests in a harmonious manner. The inauguration of the Lawrence Committee was an experiment in co-operation and conciliation. But when the Indian representatives had dissuaded Indians from acquiring property in European residential areas they looked to the City Council to carry out its obligations in providing housing, civic amenities and choice building sites for Indians. But the Council shirked its responsibility. Instead it uncompromisingly demanded statutory powers for the Lawrence Committee thereby sabotaging its efforts which resulted in the failure of the Committee to achieve its objectives.

167. Hancock, Smuts: The Fields of Force: 1919-1950, 459.

CHAPTER THREE

THE PRELUDE TO SEGREGATION IN DURBAN -

THE BROOME COMMISSIONS

As promised by the Minister of the Interior, while the Lawrence Committee attempted to prevent 'Indian penetration' on a voluntary basis in Durban, a 'fact-finding' enquiry was initiated in the form of the Indian Penetration Commission. This Commission completed its task in 1941. It was followed soon after in 1943 by the Second Indian Penetration Commission. In dealing with these Broome Commissions, as they came to be called, most researchers have skirted the peculiar circumstances surrounding the agitation that led to the appointment of the Commissions. Consequently they have made inadequate or no reference to the vast amount of evidence presented to the Broome Commissions.¹ Examination of the evidence gives a trenchant insight into European attitudes and contributes immensely to a balanced evaluation of the findings of the Commissions.

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1. The following volumes of the verbatim minutes of evidence presented to the First Indian Penetration Commission (I.P.C.) during its sittings in Durban, prepared by F.C.Rigby, the official reporter, are in the author's possession. The evidence taken in Durban is also housed in the Natal Archives Depot, Pietermaritzburg, as indicated. In author's possession:

Vols. 22-30 2.12.1940 - 14.1.1941 657-1103.
 33 23.1.1941 1269-1285.
 47-49 2.4.1941 - 4.4.1941 1754-1882.
 50-53 21.4.1941 - 8.5.1941 1912-2083.

In the Natal Archives Depot:

Vols. 22-30;47-48;50-51.N.A.,Vol.72,File 527(SJ)(1)(D.C.C., T.C.O.).Note: The complete set of evidence recorded during the Commission's sittings in the Transvaal and Natal should be available in the Transvaal Archives Depot, Pretoria. Brief reports of the evidence appeared in the Indian weeklies and European daily papers in Durban. See also, Calpin, Indians in South Africa, passim. The author was primarily concerned with the evidence and report relating to Durban.

The anti-Indian agitation in Durban and the incessant demand for legislation to curb 'Indian penetration' presented General Smuts, who had become Prime Minister of South Africa over the war issue in 1939, with a serious dilemma in regard to his relations with India. He had to decide 'either to let his country's domestic policy dictate its foreign policy; or else to bring its domestic policy into line with the requirements of its foreign policy.'² Smuts did not dare to go further than allowed by the White voters. As a matter of fact this 'Afrikaner of world repute but of domestic doubt'³ was chary of moving in advance of public opinion,⁴ i.e., White public opinion.

With the demand for legislation against 'Indian penetration' increasing daily, Smuts decided to appoint a Judicial Commission of Enquiry under the chairmanship of Justice F.N.Broome, a 'learned and respected Natalian judge,'⁵ to investigate the claims of 'Indian penetration'. Such a ploy provided Smuts with the necessary facts and at the same time served as a sop to the Dominion Party, who with the D.C.C., were among the primary instigators of the agitation. The appointment of the Commission was announced in Parliament on 15 May 1940.⁶ Its terms of reference read:

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2. Hancock, Smuts: The Fields of Force: 1919-1950, 455.
 3. G.H.Calpin, There are no South Africans, (London, Thomas Nelson and Sons, Ltd., 1941), 148.
 4. B. Friedman, Smuts: A Reappraisal (Johannesburg, Hugh Keartland, 1975), 167.
 5. Hancock, Smuts: The Fields of Force: 1919-1950, 459; see, Indian Views, 24.5.1940, 5, for character sketches and details of the Members of the Commission; also, Minute and Agenda Book, N.I.C., 14.9.1941, Presidential Address, 4.
 6. The Natal Mercury, 15.5.1940.

'...to enquire into and report whether, and, if so, to what extent, Indians have since the 1st January, 1927, commenced occupation of or acquired sites for trading or for residential purposes in predominantly European areas in the Provinces of Natal and the Transvaal...and the reasons for such occupation or acquisition.' 7

The First Broome Commission was granted full power and authority to examine persons deemed necessary by the Commissioners and was to have access to whatever documents it regarded as expedient or pertinent to its enquiry. 8 It is interesting to note that the Commission was charged merely with the task of investigating the extent of 'penetration' and the reasons therefor. No recommendations or commentary of the outcome of the 'penetration' was called for. 9 The enquiry was confined to Indians only. 10 Joshi saw this as a disparagement of Indian national honour as previous commissions were for Asiatics, not Indians, per se. 11 The Commission defined 'penetration' as 'the commencement of occupation or acquisition for trading or for residential purposes of sites in predominantly European areas by Indians since 1st January, 1927.' 12 This date was chosen because the Cape Town Agreement had been concluded shortly after that date.

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7. Union of South Africa, Government Gazette (Notice No. 841, 22.5.1940), (CXX), (2771), 30.5.1940. The members of the Commission were: Honourable Justice Francis Napier Broome, K.C., M.C., as Chairman; Arthur Ernest Charter, Esq., O.B.E.; and Nimrod Smit, Esq. The Secretary of the Commission was A.B. Kriegler, Esq., Principal Clerk in the Department of the Interior; see also, I.P.C. Report (UG 39/1941, 25.7.41), 1 and 76.
 8. Ibid., 1; see also, Indian Views, 24.5.1940, 7.
 9. I.P.C. Report (UG 39/1941, 25.7.41), para. 13, 5; see also, The Natal Mercury, 15.5.1940; Indian Opinion, 27.9.1940, 323.
 10. I.P.C. Report (UG 39/1941, 25.7. 41), para. 2, 3.
 11. Joshi, The Tyranny of Colour, 270.
 12. I.P.C. Report (UG 39/1941, 25.7.41), para. 1, 3.

The widest possible publicity was given to the enquiry which the Commission was about to undertake and requests for information were made from various sources.¹³ The Commission held twenty-one public sittings at twelve centres in the Transvaal at which evidence was submitted by 130 persons. In Natal thirty-two public sittings were held at eight centres and 141 persons gave evidence.¹⁴ The Commission also executed numerous inspections in loco and met frequently in conference.

This whole issue had been born out of antipathy which had been fostered by Whites towards Indians.¹⁵ It was a victory for anti-Indian agitators.¹⁶ It was a buttress for the power of the ruling oligarchy in Durban, the most British town in the Union, ironically demanding segregation under the guise of the penetration issue.¹⁷ Professor H.R.Burrows, of the University of Natal, in an address to the Indo-European Council in Durban pointedly summarised the crux of the problem when he said:

'Penetration is a small problem which does not concern ninety-nine and three quarters [per cent] of the European population...But the fact is that the remaining quarter per cent. have enough influence to make it appear a problem.'¹⁸

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- 13. T.A., K82 (Indian Penetration, 1940-41), Minutes of First Meeting of I.P.C. held on 15.6.1940 at Pietermaritzburg, 3.
 - 14. I.P.C. Report (UG 39/1941, 25.7.41), para.31, 12. The transcript evidence comprised 656 pages for the Transvaal and 1427 pages for Natal, 2083 pages in all.
 - 15. Gangulee, Indians in the Empire Overseas, 88.
 - 16. Pachai, The South African Indian Question, 160.
 - 17. Indian Views, 26.1.1940, 2; see also, Indian Opinion, Editorial, 5.4.1940, 118.
 - 18. Indian Opinion, 10.5.1940, 157.

It is important to note that Indian leaders have repeatedly and vehemently denied that 'penetration' had occurred. So it could be argued that the Commission was appointed partly in response to the demand by Indian leaders 'for a judicial enquiry to refute the charge of penetration.'¹⁹ But the 'Nationalist Blocs' of the Transvaal Indian Congress and the N.I.A. protested against the appointment of the Commission and called upon the community to boycott it.²⁰ The conflict was between vested interests and principle. Those who opposed the co-operation of the community with the Commission argued that co-operation would be tacit acceptance of segregation. Those who wished to co-operate did so out of fear that they would lose what they already had if they did not acquiesce in co-operating.

The Commission reported that it recognised the Transvaal Indian Congress as representative of the Indians in the Transvaal.²¹ The public sittings which commenced on 9 October 1940 were attended by large numbers of Indians with the Transvaal Indian Congress presenting the case of the Indians in the Transvaal. There was 'no evidence of any boycott.'²² In Natal, while the N.I.A. had official recognition, the Commission in consultation with the Minister of the Interior, accorded de facto recognition to the N.I.C. because it 'was in fact an influential body with a large membership.'²³ The Commission also recorded an absence of any boycott in Natal despite the protests and appeals of the 'Nationalist Bloc' of the N.I.A.²⁴

19. Joshi, The Tyranny of Colour, 270.

20. Ibid., 270-272, for more details see also, Pahad, 'The Development of Indian Political Movements', 172-173; Indian Opinion, Editorial, 24.5.1940, 176; Pachai, The South African Indian Question, 160; The Leader, 18.1.1941, 1, for details of a mass meeting in Durban to protest against the Commission.

21. I.P.C. Report (UG 39/1941, 25.7.41), para. 32, 11.

22. Ibid., para. 33, 12.

23. Ibid., para. 39, 13.

24. Ibid., para. 40, 13.

The Commission noted also that at the outset the N.I.A. and the N.I.C. in their efforts to present the case for the Indian community appeared 'as rivals rather than as collaborators.'²⁵ Their actions and questions were directed towards the aggrandisement of their respective organisations. But the acrimony between the N.I.A. and the N.I.C. was soon replaced by a desire for profitable progress.

The primary concern of this thesis is 'Indian penetration' in the Durban area. We shall therefore refer to the evidence presented to the Commission in the Transvaal and other parts of Natal only if such comments are relevant to the problem in Durban. The Commission itself regarded the enormity of the 'penetration' issue in Durban to be such as to warrant separate treatment.²⁶ The numerous sittings in the Transvaal and Natal resulted in a plethora of evidence being presented.²⁷ In Durban the principal actors in this drama of 'Indian penetration' were the Durban City Council on the one hand and the N.I.A. and N.I.C. on the other. In addition, individuals, organisations and ratepayers' associations also appeared before the Commission.

25. Ibid., para. 39, 13.

26. Ibid., para. 293, 65.

27. See above, 83, f/n. 14.

In the main the evidence presented by the D.C.C. and the Indian organisations to the Commission were in the form of memoranda. The D.C.C. presented four memoranda together with annexures. The N.I.C. presented a preliminary statement on the subject of alleged 'Indian penetration' into predominantly European areas; a first statement on the subject of amenities and housing; a second statement on the subject of occupation of areas; answers of the Congress to the Durban Corporation's fourth memorandum; third and final statement; together with relevant annexures to each of the memoranda. Finally, the N.I.A. presented a preliminary memorandum and a final statement with an accompanying appendix containing annexures. ²⁸

Cross-examination of witnesses was conducted by the Commissioners, Graham Mackeurtan, K.C., for the D.C.C., Kajee for the N.I.C., and Rustomjee for the N.I.A. The Chairman allowed this cross-examination and questioning of witnesses for the purpose of elucidating points made in the memoranda, letters, and so forth; to verify ex parte statements; to clarify misconceptions; and to rectify errors. The Commission began its sittings in Durban on 2 December 1940 ²⁹ and immediately ran into problems with the D.C.C. representative, Graham Mackeurtan.

28. All of these are in the Author's possession.

29. I.P.C., Minutes of Evidence, Vol.22,2.12.1940, 657 et seq.; see also, Indian Opinion, 6.12.1940, 413.

The Chairman commenced proceedings by outlining the objectives of the Commission ³⁰ and, inter alia, explained that invitation was extended to witnesses to submit to cross-examination; but no witness who appeared before the Commission was under compulsion 'to say one word more than he chooses to say, or to answer any question that he does not desire to answer.' ³¹ He elaborated that in order to test the veracity and accuracy of statements cross-examination of the deponent by the person adversely affected was deemed the best method.

Mackeurtan outlined the Council's case that 'No charge or accusation of any kind whatever has been made;' ³² that the Indians were not on trial ³³ and that the Council was 'absolutely neutral'. ³⁴ This is paradoxical when one considers that the D.C.C. was challenging the right of one group of ratepayers to acquire and occupy property within the area of its jurisdiction. What is more it was using ratepayers' money to do so. He referred to the memorandum presented by the D.C.C., together with maps and annexures depicting the acquisition of properties by Indians in areas regarded as predominantly White, and explained their significance at length. In the light of this explanation Mackeurtan deemed it unnecessary for witnesses to be submitted for cross-examination. ³⁵ Rustomjee claimed that the memorandum and annexures submitted by the Durban Corporation 'are in many respects inaccurate and misleading, and that taken as a whole they are very far from giving that impartial view of the subject, which the City

30. I.P.C., Minutes of Evidence, Vol.22, 2.12.1940, 658.

31. Ibid., 658.

32. Ibid., 660.

33. Indian Opinion, 6.12.1940, 413; Indian Views, Editorial, 6.12.1940, 1, construed this comment as being made with 'a grimacing tongue in the cheek' air.

34. I.P.C., Minutes of Evidence, Vol.22, 2.12.1940, 660.

35. Indian Views, 6.12.1940, 3.

Council claims to have represented.' ³⁶ A. Milne, appearing for the N.I.C., concurred with Sorabjee Rustomjee making a similar indictment on the D.C.C. ³⁷

The Chairman of the Commission thereupon asked Mackeurtan to reconsider his decision. He explained that since Durban was the largest municipality in Natal with a preponderance of Indians the decision arrived at concerning the officials of the D.C.C. being cross-examined was of 'fundamental importance in regard to the future work of the Commission.' ³⁸ He could have added that the anti-Indian agitation in Durban was the reason for the appointment of the Commission and the D.C.C. was the main culprit.

Broome pointed out further that no statutory provisions existed in Natal, as they did in the Transvaal, to compel witnesses to be cross-examined. He assured Mackeurtan that there had been no abuse of cross-examination at any sitting of the Commission in the Transvaal. Great benefit had accrued therefrom. He emphasised the probative value of such cross-examination. The point was also made that the mass of information presented by the D.C.C. should be tested for its accuracy. He could think of no better way to demonstrate the accuracy or to purge any inaccuracy of information than by subjecting it to cross-examination. ³⁹

36. I.P.C., Minutes of Evidence, Vol.22, 2.12.1940, 683.

37. Ibid., 686-687.

38. Ibid., 688-689; see also, Indian Opinion, 6.12.1940, 414; The Natal Mercury, 3.12.1940; Indian Views, 6.12.1940, 1.

39. I.P.C., Minutes of Evidence, Vol.22, 2.12.1940, 690. For Broome's dilemma regarding this problem see, F.N. Broome, Not the Whole Truth (Pietermaritzburg, University of Natal Press, 1962), 184-187.

Consequently, the Chairman adjourned the sitting until Wednesday, 4 December 1940 to allow the D.C.C. to reconsider its attitude. When the Commission reconvened the D.C.C. agreed to submit its officials to questioning.⁴⁰ The D.C.C.'s decision was more likely, as the Indian Views expressed it, not so much out of 'any laudable change of heart' but 'by a calculation as to consequences.'⁴¹

At the outset, the N.I.A. rejected the claim of impartiality made by the Council. It referred to the text of a Council resolution of 10 November 1939 expressing alarm at 'penetration' and asking for a Commission of enquiry.⁴² The N.I.C. also expressed doubt at the bona fides of the Council claiming that the statistics, details and supporting maps given by the D.C.C. 'are misleading and give a wrong impression,...'⁴³

The Durban Corporation alleged that Indians had acquired 577 properties valued at £823 518 during the period 1 January 1927 to 30 September 1940 in areas of the Old Borough which were permanently European.⁴⁴ Further, the number of European-owned properties abutting onto Indian-owned properties increased from 321 in 1927 to 781 in 1940.⁴⁵ The Council maintained that 'Indian acquisitions of property, when compared with European, have taken place at a markedly higher rate

40. I.P.C., Minutes of Evidence, Vol.23, 4.12.1940, 697; see also, The Natal Mercury, 5.12.1940; The Natal Daily News, 4.12.1940.

41. Indian Views, Editorial, 6.12.1940, 1.

42. N.I.A., Final Statement to the I.P.C., 1940-1941, 11.

43. N.I.C., Preliminary Statement on the Subject of Alleged Penetration into predominantly European Areas submitted to the I.P.C., 31.3.1941, 1.

44. D.C.C.'s Second Memorandum to the I.P.C., n.d., Schedule A, 1.

45. Ibid., Annexure B, 26.

in relation to the increases in population than has occurred [sic] in the case of European acquisitions.' ⁴⁶

The Corporation also provided statistics of tenant-occupation of premises by Indians from the 1 January 1927 to 31 August 1940 in the predominantly European areas. Of 717 properties visited in various districts, 359 were occupied by Europeans, 265 by Indians, 58 by Others and 35 were unoccupied. This gave a 38,85 per cent Indian occupation as against 52,6 per cent European occupation. ⁴⁷ In the Added Areas the

46. Ibid., 6-7.

General Observations Re Old Borough Statistics - 1927 to 1940.

Population: European Population increased by 16 580 being 30,60%.

Indian " " " 7 374 " 43,43%.

(With the exception of the year 1936, all population figures are estimates furnished by the City Medical Officer of Health from official records. Those for 1936 are taken from the Government Census).

Valuation: European-owned values for Rating have increased by £114 392 140 being 69,16%.

Indian-owned values for Rating have increased by £2 047 020 being 142,03%.

Number of Sub-Divisions:

European-owned Sub-divisions have increased in number by 1 997 being 18,52%.

Indian-owned Sub-divisions have increased in number by 749 being 72,43%.

Correlation between population and ownership:

The percentage increases in European population, valuation, and subdivisional ownership are 30,60%; 69,16% and 18,52% respectively. The percentage increases in Indian population, valuation, and subdivisional ownership are 43,43%; 142,03% and 72,43% respectively.

Ibid., Annexure C, 27.

47. Ibid., Annexure E, 29.

Indian population had increased from 51 900 in 1934 to 63 368 in 1940 giving a percentage increase of 22,09 per cent. Moreover, the increase in sub-divisions was 27,01 per cent and valuations 37,85 per cent.⁴⁸ The overriding conclusion of the D.C.C was that in the Added Areas the acquisition of property by Indians 'judged by the rateable value or the total number of the individual properties concerned, has advanced at a rate which exceeds the rate at which their population in those Areas has increased.'⁴⁹

The figures given by the D.C.C. in its annexures were disputed both by the N.I.A. and the N.I.C. Rustomjee argued that several subdivisions which constituted a single property were taken as separate acquisitions.⁵⁰ He computed 58 subdivisions thus shown separately but which in fact made up one main transaction.⁵¹ He argued for further deductions from the 577 cases:⁵² 9 were in the name of Indians as at 1 January 1927; 9 cases repeated in the Council's annexure A; 29 cases of transfers from Indians to Europeans since 1 January 1927 to September 1940; 229 cases as being contiguous areas to Whites.⁵³ The 577 cases

48. Ibid., Annexure F, 30.

49. Ibid., 8; see also, Indian Views, 6.12.1940, 2.

50. I.P.C., Minutes of Evidence, Vol.29, 13.1.1941, 1013.

51. D.C.C.'s Fourth Memorandum to the I.P.C., 22.4.1941, 1.

52. I.P.C., Minutes of Evidence, Vol.47, 2.4.1941, 1785.

53. Ibid., 1786; see also, N.I.A., Final Statement to the I.P.C., 1940-1941, Appendix, Annexures A-F.

contained in the D.C.C. Annexures had to be reduced by the 334 acquisitions cited. A further 31 cases were Indian-owned and Indian-occupied properties in a predominantly European area. The balance of 212 properties were Indian-owned but occupied by Europeans and were regarded as an investment.⁵⁴

The N.I.C. and the N.I.A. had examined the statistics from the point of occupation 'rather than ownership',⁵⁵ because, amongst other considerations, the D.C.C. had intended to demarcate areas according to 'habitation'. It had not at any time specifically mentioned that it would change to the basis of 'ownership'. Rustomjee also pointed out the fallacy of the statistics used by the D.C.C. explaining that comparisons based on mere percentages could be grossly misleading. He illustrated the point he was making by a hypothetical example: if Europeans had 400 houses and there was an increase of 200, the percentage increase was only fifty per cent. But if an Indian had one house and increased it by another that was a hundred per cent increase. Thus percentages used to show 'Indian penetration' were deceptive.⁵⁶

We now turn to another aspect. The Council intimated that it had reason to believe that the main argument of the Indian community to justify 'penetration' into predominantly European areas would be that the Council was negligent in providing sites for affluent Indians.⁵⁷

54. I.P.C., Minutes of Evidence, Vol.47, 2.4.1941, 1787; see also, The Natal Mercury, 14.1.1941.

55. I.P.C., Minutes of Evidence Vol.50, 21.4.1941, 1921; see also, Indian Opinion, 2.5.1941, 140.

56. For further details of Rustomjee's arguments see, I.P.C., Minutes of Evidence, Vol.30, 14.1.1941, 1052 et seq.

57. D.C.C.'s First Memorandum to the I.P.C., 27.8.1941, 5.

Further that the adequate civic amenities in European areas were conspicuously lacking in Indian areas. While admitting it had made no provision for such sites as requested by the Indian community, the Council denied at the same time that it had any obligation to do so.⁵⁸ Moreover, the D.C.C. asserted that had it provided such sites, Indians would have objected on the grounds of 'an attempted de facto segregation.'⁵⁹ In fact the N.I.A. did claim that the gross neglect of the Durban Corporation in regard to amenities⁶⁰ as well as the lack of choice sites⁶¹ induced many Indians who could afford to do so to acquire and occupy properties in the well-serviced European areas. The N.I.C. endorsed the view expressed by the N.I.A.⁶²

In its third memorandum and annexures the D.C.C. attempted to rationalise its neglect in providing adequate choice building sites for the Indian community. The plaintive complaint of the Indians according to the D.C.C. was that whenever choice sites were put up for Indian occupation these were rejected as being actuated by a desire to segregate Indians.⁶³ Moreover, Europeans in the immediate vicinity of the proposed sites immediately registered their protests against such action.⁶⁴ The Council was reluctant to auction land where Whites and Indians could bid because of the riot that occurred at an auction in

58. Ibid., 5.

59. Ibid., 6.

60. Memorandum submitted by Natal Indian Association to the I.P.C., 29.7.1940, 16.

61. D.C.C.'s Third Memorandum to the I.P.C., 14.12.1940, 1; see also, N.I.A., Final Statement to the I.P.C., 1940-1941, 20.

62. N.I.C., First Statement to the I.P.C., 2.4.1941, 2.

63. D.C.C.'s Third Memorandum to the I.P.C., 14.12.1940, 4.

64. Indian Opinion, 24.1.1941, 26.

1922, which led to the promulgation of the Durban Land Alienation Ordinance No. 14 of 1922.⁶⁵ The débâcle of the Cato Manor sale on 4 March 1933 where only four plots were purchased was given prominence by the D.C.C.

The N.I.A. rejected the arguments of the D.C.C. maintaining emphatically that 'the Durban City Council is in duty bound to provide sites for its Indian Burgesses just as it has provided for its European Burgesses.'⁶⁶ P.R. Pather in evidence before the Commission stated that insofar as amenities were concerned those areas which were predominantly Indian, such as Clairwood, Merebank, portions of Sydenham, Overport and Riverside, 'have always remained the Cinderella of Durban'.⁶⁷ Pather also alluded to the fact that the Durban Corporation did not maintain impartiality in the Old Borough⁶⁸ and a 'dying vote' was allocated to the Indian community⁶⁹ in the provision of amenities, i.e., after White needs have been catered for. The N.I.C. expressed the disability of the Indian community succinctly:

'...racial considerations and the absence of a voice in the civic life of the local authorities are the reasons for this past neglect, which we are afraid will continue so long as the remedy of representation is denied to us'.⁷⁰

65. Indian Views, 17.1.1941, 3.

66. N.I.A., Final Statement to the I.P.C., 1940-1941, 31.

67. I.P.C., Minutes of Evidence, Vol.50, 21.4.1941, 1954; see also, N.I.C. Reports on Housing, Chapter One, 34, f/n. 109.

68. I.P.C., Minutes of Evidence, Vol.50, 21.4.1941, 1961.

69. Ibid., 1967; see also, 1969 et seq. for testimony of other witnesses.

70. N.I.C., Third and Final Statement to the I.P.C., 28.4.1941, 22.

From the foregoing it is obvious that the principal arguments of the D.C.C., N.I.A. and the N.I.C. revolved around the memoranda of the Durban Corporation and the statistics contained in the annexures. The microscopic examination of the data and the debates resulting from such criticism of the N.I.C. and N.I.A. occupied much of the time of the Commission in Durban.⁷¹ The key point of difference between the Indian organisations and the Council was the question of occupation and ownership: the latter contended 'Indian penetration' primarily involved ownership of property; whereas the Indian organisations considered the question of occupation as the only determinant of 'penetration'.

Representatives of the burgesses' associations and individuals added a further dimension: 'Indian penetration' became different things to different people, but in the main 'revealed a widespread and burning sense of grievance on the part of the European public.'⁷² Some complained that 'the introduction of Indians to a European vicinity tends to depreciate, not only the value of property, but to undermine [sic] the morale of the neighbourhood';⁷³ and that neighbouring proprietors were prone to panic and sell out.⁷⁴ Landlords complained that it was difficult to rent premises when prospective tenants saw 'Indians walking up and down the road.'⁷⁵

71. I.P.C. Report (UG 39/1941 , 25.7.41), para. 303, 67.

72. Ibid., para. 312, 70.

73. I.P.C., Minutes of Evidence, Vol.24, 5.12.1940, 706.

74. Ibid., 715, 724, 789. see below, 108, the American situation.

75. Ibid., 757; see also, Indian Views, 3.1.1941, 9.

Some witnesses declared that Indians hankered after property at a low price. When Indians acquired a footing in an area, other White-owned properties were sold at a depreciated value.⁷⁶

Other grievances mentioned to the Commission involved what may be described as 'nuisance' value on the part of the European residents: Some complained of the slaughtering of goats and fowls.⁷⁷ Another expressed disgust at the 'dirt and filth' found on Indian properties.⁷⁸ E. W. Stanton assumed that Indians who had acquired homes in the area bounded by Currie, Haden, Montpelier Roads and Sixth Avenue would not be able to maintain 'a standard of living in keeping with the properties.'⁷⁹

H.H. Alder who lived in Poplar Road expressed consternation at having Indian neighbours because 'the smells from the cooking stuff are very offensive sometimes.'⁸⁰ He informed the Commission that he once called the police because his neighbours 'were playing a gramophone with Indian music, which is very distasteful to Europeans.'⁸¹

One witness concluded that since Islamic law allowed polygamy, the women living in a house opposite his were the wives and a concubine of the man living there. Under cross-examination he admitted that he was not certain that the women were in fact the man's wives or concubine, but he had assumed this to be so, because of the Islamic law.⁸²

76. I.P.C., Minutes of Evidence, Vol.25, 9.12.1940, 836, 865; see below, 107-108.

77. Ibid., 837-838; see also, Indian Views, 7.2.1941, 9.

78. I.P.C., Minutes of Evidence, Vol.26, 10.12.1940, 939.

79. Indian Opinion, 13.12.1940, 422.

80. I.P.C., Minutes of Evidence, Vol.27, 11.12.1940, 943.

81. Ibid., 943.

82. I.P.C., Minutes of Evidence, Vol.25, 9.12.1940, 838-840.

A mother complained that she had moved out of her home when Indians came into the area because she had two young daughters. She had had to escort them everywhere. ⁸³

H.T. Laughlin of the Durban Burgesses' Association complained 'that through Indians owning property it causes the congregation of undesirable natives.' ⁸⁴ Although he conceded that Indians were not responsible for bringing the Blacks into the neighbourhood their presence he contended caused the neighbourhood to degenerate.

It appears from the evidence presented to the Commission that these grievances were petty and isolated. Under cross-examination vague and irrelevant comments were often made to substantiate the points of view expressed. But anti-Indian agitators generalised and exaggerated these complaints and cited such incidents to rouse prejudice against the few Indians who acquired property in their vicinity.

A summary of the Indian Penetration Commission's report was released for publication on 11 October 1941 by the South African Press Association. ⁸⁵ The principal conclusion of the Commission was that the 'position does not appear to be serious if the total number of cases

83. I.P.C., Minutes of Evidence, Vol.27, 11.12.1940, 973.

84. I.P.C., Minutes of Evidence, Vol.24, 5.12.1940, 745.

85. The Natal Daily News, 11.10.1941.

is considered in relation to the Indian population.' ⁸⁶ The detailed report was published and made available at a later date. In its Report the Commission accepted the contention in determining the racial character of an area, namely, that 'occupation is a more important factor than ownership.' ⁸⁷ In assessing whether an area was predominantly European or Indian significance was attributed to the general character of the area. ⁸⁸ This, the Commission concluded, would be primarily indicated by the actual inhabitants in the area concerned rather than the property owners. A bare majority of Europeans still less a preponderance of European property owners could not be used as criteria to determine the character of an area.

The Council had originally claimed 577 acres of 'penetration' into the Old Borough during the period 1 January 1927 to 30 September 1940. These acquisitions included individuals and companies. The Indian representatives wanted the unit rather than the subdivision to be considered as the acquisition. This was not acceptable to the Commission.

86. The Natal Mercury, 13.10.1941; see also, Indian Opinion, Editorial, 31.10.1941, 316; Indian Views, 17.10.1941, 2; I.P.C. Report (UG 39/1941, 25.7.41), para. 290, 64.

87. Ibid., para. 297, 66; see also above, 95; Calpin, Indians in South Africa, 162-163; L. Kuper et al., Durban: A Study in Racial Ecology, 149.

88. I.P.C. Report (UG 39/1941, 25.7.41), para. 8, 4.

The Commission concluded that there were in fact 512 subdivisions acquired by Indians in the predominantly White areas of the Old Borough.⁸⁹ It is interesting to note that of these 512 cases, 150 were sites acquired and occupied by Indians; 362 were acquired but not occupied by Indians. The Commission classified the areas as:

'A' areas which were adjoining or would soon become Indian areas; 'B' areas where Indians had infiltrated considerably, but which were still predominantly European-owned; the remainder of the areas were 'C' areas.⁹⁰

89. These acquisitions were as follows:

YEAR	NUMBER OF SUBDIVISIONS	PURCHASE PRICE	BOROUGH VALUATION
1927	16	£ 27 095	£ 20 300
1928	11	15 335	13 080
1929	43	57 229	44 410
1930	37	50 017	36 110
1931	43	64 498	49 710
1932	13	11 845	12 760
1933	14	19 595	17 240
1934	23	25 880	23 620
1935	41	47 771	42 700
1936	50	65 109	59 390
1937	44	78 842	58 200
1938	52	79 415	60 370
1939	78	99 480	81 620
* 1940	47	83 810	67 060
*(To Sept only)	512	£725 921	£586 570

Ibid., para. 304, 68.

90. Ibid., para. 299, 66.

231 cases of penetration were found in the 'A' areas, of which 96 were in Indian occupation. In the 'B' areas 82 cases were reported; 13 were occupied by Indians while 69 were not. In the 'C' areas, out of a total of 199 cases, 41 were in Indian occupation while 158 were not in Indian occupation.⁹¹

These statistics supported the N.I.A. claim that because of the lack of sites for Indians encroachment onto contiguous areas was inevitable.⁹² Further it is apparent from the figures that only 150 or less than 30 per cent of the sites were in Indian occupation. The report was not clear as to the occupants of the remaining properties.

The Commission was not able to determine the number of properties acquired as investments.⁹³ Evidence had been presented, nonetheless, that Indians were acquiring property as investments.⁹⁴ We shall elaborate on this point when dealing with reasons for 'penetration'.

The serious lack of housing and amenities, unavailability of choice sites for the wealthier class of the Indian community and the need for accommodation because of the natural increase in population comprised a major portion of the evidence presented to the Commission.⁹⁵ As a result of the in loco inspections the Commission concluded that in 'some predominantly Indian areas...the standard of civic amenities was deplorably low, and we can well understand that the inhabitants of those

91. Ibid., para. 307, 68-69.

92. N.I.A., Final Statement to the I.P.C., 1940-1941, 17-18.

93. I.P.C. Report (UG 39/1941), 25.7.41), para. 309, 69.

94. I.P.C., Minutes of Evidence, Vol.28, 12.12.1941, 996.

95. See above, 92-94.

areas would go elsewhere if they could.' ⁹⁶ But the Council was exculpated of deliberate neglect. ⁹⁷ The Commission felt that because of financial considerations certain projects had to be 'refused or postponed'. The pertinent point correctly assessed by the Commission was that:

'Refusal or postponement is perhaps less likely if the consequent disappointment can be expressed through the ballot box.' ⁹⁸

Insofar as the Added Areas were concerned the Commission was of the firm opinion that in 1927 these areas were not predominantly European. A few complaints were received from some Europeans. ⁹⁹ The Commission accordingly did not regard the question of 'Indian penetration' in the Added Areas as acute.

The D.C.C. had declared that 'Indian penetration' was to 'some extent psychological rather than material,' ¹⁰⁰ and continued to maintain that:

'It is not unnatural that the social conditions which obtain in this country should imbue [sic] some members of a proud and wealthy coloured people with an urge to demonstrate their equality in all respects with the European race.' ¹⁰¹

96. I.P.C. Report, (UG 39/1941, 25.7.41), para. 311, 69.

97. Ibid., para. 311, 69.

98. Ibid., para. 311, 70.

99. Some 13 complaints were received. These were briefly outlined in the report. Ibid., para. 316, 71.

100. D.C.C.'s First Memorandum to the I.P.C, 27.8.1940, 6.

101. Ibid., 6; see also, D.C.C.'s Fourth Memorandum to the I.P.C., 22.4.1941, 9.

The N.I.C. considered such an assertion as being 'unwarranted' and claimed that the chief desire on the part of the Indian was the acquisition of a house rather than to demonstrate equality.¹⁰² The Commission, too, rejected the Council's contention outright stating they could not accept that reason as 'the true and decisive reason for what has taken place.'¹⁰³ The Commission similarly rejected the view that 'Indian penetration' was a 'gesture of defiance' to the policy of segregation.¹⁰⁴ The Commission was convinced Indians preferred to live among themselves.

The Commission placed a great deal of emphasis on the evidence of Professor H.R. Burrows. Burrows saw 'Indian penetration' as the mere manifestation of a very common phenomenon in urban development referred to as 'invasion-and-succession'.¹⁰⁵ This introduces a vital concept.

The paradigms of plant and animal ecology¹⁰⁶ are analagous to the social and demographic metamorphosis of residential areas which include changes in their ethnic and racial composition.¹⁰⁷ Further there is a constant centrifugal movement of neighbourhoods and as they become older they tend to be less desirable to those who can afford to move out of them.¹⁰⁸ A facet of the process encompasses competition between the established group and the new group over the issue of land use:

102. N.I.C., Answers of the Congress to the Corporations's Fourth Memorandum submitted to the I.P.C., 2.5.1941, 10.

103. I.P.C. Report (UG 39/1941, 25.7.41), para. 319, 72.

104. Ibid., para. 323, 73.

105. Ibid., para. 320, 72; see also, India, Fallacies of South African Government Case, n.d., 5.

106. D.P. Varady, Ethnic Minorities in Urban Areas: A Case Study of Racially Changing Communities (Boston, M.Nijhoff Publishing, 1979), 14; see also, R.E. Park, 'Succession, an Ecological Concept', American Sociological Review, (April 1936), (1), (2), 171-179; E.W. Burgess, 'Can Neighborhood Work have a Scientific Basis?' in R.E. Park et al., The City (Chicago, University of Chicago Press, 1970), 145; R.D. McKenzie, 'The Ecological Approach to the Study of the Human Community', in R.E. Park et al., The City, 74.

107. R.M. Northam, Urban Geography (New York, John Wiley and Sons, Inc., 1975), 258.

108. H. Hoyt, The Structure and Growth of Residential Neighborhoods in American Cities (Washington, D.C., 1937), 10.

'Invasion involves new land uses or the movement of new groups into an area' and when 'the new group or land use comes to predominate, succession has occurred.'¹⁰⁹ Numerous American studies of this phenomenon have been carried out. They involved Negro-White relations, which, mutatis mutandis, explain the problem of 'Indian Penetration' in Durban .

Burgess, like Hoyt, contended that with the growth of a community expansion occurs outwards from the centre: from the central business district (C.B.D.) towards the outskirts of the city.¹¹⁰ While other land uses exert pressure on residence, families generally respond to the appeal of more attractive residential districts. These population movements take the form of successive waves.¹¹¹

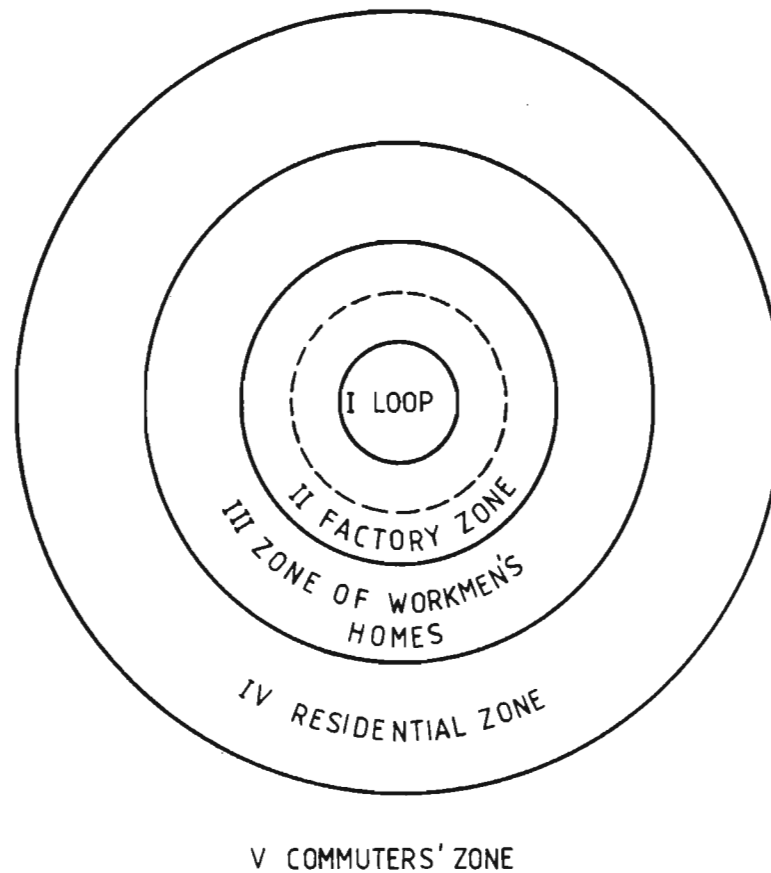
Invasion commences as unnoticed or gradual 'penetration'. There is reaction and violent or mild resistance is offered by the inhabitants of the neighborhood. With the influx of newcomers the area is abandoned by the old time residents. Ultimately a climax is reached by the achievement of a stable community. The racial invasion-succession sequence is an exemplification of the self-fulfilling prophecy where a

109. M. Abrahamson, Urban Sociology (New Jersey, Prentice-Hall, Inc., Second Edition, 1980), 12-13.

110. E.W.Burgess, 'Residential Segregation in American Cities', The Annals of the American Academy of Political and Social Science, (November 1928), (140), 106; see diagram of Burgess' Spatial Model, 104.

111. Ibid., 112.

BURGESS' SPATIAL MODEL



Source : B.J.L. Berry and F.E. Horton, Geographic Perspectives on Urban Systems (New Jersey, Prentice-Hall Inc., 1970), 308.
See also : E.W. Burgess, 'Residential Segregation in American Cities', The Annals of the American Academy of Political and Social Science, (Nov. 1928), (140), 107.

residential area normally changes from one racial group to another.¹¹²
 For example, in the American context, Myrdal's observations illustrate the phenomenon clearly:

'When a few Negro families do come into a white neighborhood, some more white families move away. Other Negroes hasten to take their places, because the existing Negro neighborhoods are overcrowded due to segregation. This constant movement of Negroes into white neighborhoods makes the bulk of the white residents feel that their neighborhood is doomed to be predominantly Negro, and they move out - with their attitudes against the Negro reinforced.'¹¹³

So Whites would generally move out of an area when 'the proportion of non-whites exceeds the limits of the neighborhood's tolerance for interracial living (this is the "tip point"),....'¹¹⁴ This was considered a typical pattern of behaviour. In many parts of the world this phenomenon attracts little attention.¹¹⁵ Durban was by no means unique. The arrival of 'outgroups' in an area and resultant tension is a common phenomenon. In Durban racial prejudices, commercial jealousies and the emotional setting of a colonial mentality accentuated the tensions making a rational solution of the problem more complex.¹¹⁶

112. E.P.Wolf, 'The Invasion-Succession Sequence As a Self-Fulfilling Prophecy', Journal of Social Issues, (1957), (X111), (4), 8.

113. G.Myrdal, An American Dilemma: The Negro Problem and Modern Democracy (New York, Harper and Brothers Publishers, 1944), 623.

114. M.Grodzins, 'The Metropolitan Area as a Racial Problem' as quoted by E.P. Wolf, 'The Tipping-Point in Racially changing Neighborhoods', Journal of the American Institute of Planners (August 1963), (29), (3), 218.

115. I.P.C. Report (UG 39/1941, 25.7.41), para. 321, 73.

116. H.R.Burrows, 'Durban's Growing Pains: A Racial Problem', Race Relations, (1940), (V11), (2), 28.

Another reason adduced by the N.I.C. was that the natural growth of the Indian population motivated the Indian community to convert residential quarters in the central part of the city into shops and offices.¹¹⁷ This placed a premium on additional accommodation and facilities. The D.C.C. also conceded that the natural increase in the Indian population accounted for some of the acquisition of property.¹¹⁸ The Commission dismissed the increase in population as a minor reason for 'penetration'.

The Commission next evaluated the arguments propounded by the Indian organisations that the Cape Town Agreement as the Magna Carta of the Indian community was the crucial motivation for 'Indian penetration'. In summary, the principal conclusions of the Indian viewpoint were that: the Cape Town Agreement recognised the Indian community as permanent citizens of South Africa thus giving them security of tenure; permission to bring families over from India created a demand for residential premises; the adoption of western standards of life and the general upliftment of the community because of education and better working conditions resulted in an improved standard of living and a desire for

117. N.I.C., Preliminary Statement to the I.P.C., 31.3.1941, 4.

118. I.P.C., Minutes of Evidence, Vol.22, 2.12.1940, 677; see also, D.C.C.'s Fourth Memorandum to the I.P.C., 22.4.1941, 10.

better housing.¹¹⁹ The Commission accepted the arguments generally presented in regard to the Cape Town Agreement that the enhanced condition of the Indian community created the need for acquisition of properties.¹²⁰

The Commission also remarked that: 'At almost every centre in Natal and the Transvaal where penetration was complained of the allegation was made that the acquisition or occupation of sites by Indians depreciated the value of surrounding property.'¹²¹ Although this consideration was outside the terms of reference of the Commission, they felt constrained to state that the allegation was without foundation¹²² and incapable of demonstration because of numerous variables affecting property values. Evidence was led that Indian proprietors renovated their acquisitions with the beneficial effect of enhancing and increasing the value and rentals of the surrounding property.¹²³

119. I.P.C.Report(UG 39/1941, 25.7.41), para. 330, 75. These aspects were repeatedly stressed in memoranda and evidence before the Commission. Inter alia, the following references are relevant:
N.I.A., Final Statement to the I.P.C., 1940-1941, 37;
N.I.C., First Statement to the I.P.C., 2.4.1941, 1;
N.I.C., Third and Final Statement to the I.P.C., 28.4.1941, 19;
I.P.C., Minutes of Evidence, Vol.47, 2.4.1941, 1788-1793;
I.P.C., Minutes of Evidence, Vol.48, 3.4.1941, 1854-1859;
I.P.C., Minutes of Evidence, Vol.52, 7.5.1941, 2045;2056-2057;
UNISA, Accession 105, 7.3.4.

120. I.P.C.Report (UG 39/1941, 25.7.41), para. 331-334, 75-76.

121. Ibid., para. 13, 4; see also above, 95, f/n. 73.

122. Ibid., para. 13, 4; see also, I.P.C., Minutes of Evidence, Vol. 25, 9.12.1940, 824, 830; Palmer, Natal's Indian Problem, 18; Calpin, A.I. Kajee, 124-126.

123. I.P.C., Minutes of Evidence, Vol.50, 21.4.1941, 1924-1925; 1929.

American studies of similar situations where Negroes were involved indicated conclusively the fallacy that values of property tend to fall when non-Whites 'encroach' into White areas.¹²⁴ In the studies carried out by William M. Ladd, the findings were contrary to the belief that property values become depressed when Blacks purchased properties in White areas.¹²⁵ Some researchers found that non-White occupancy actually increased real estate values and the economic standards of the neighbourhoods.¹²⁶ Sometimes Whites construe the initial entry by non-Whites as a disaster to be avoided at all costs. Consequently numerous properties may be offered for sale simultaneously glutting the market.¹²⁷ The White residents succumb to the myths of intolerance, ignorance, unreasonable and stereotyped thinking. They resort to 'panic' selling which tends to lower the prices of homes. But this is a temporary phenomenon.¹²⁸

The Commission regarded the desire to obtain good investments as the main reason for 'Indian penetration' although the Commission was unable to determine the number of properties acquired as investments.¹²⁹

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124. L. Laurenti, 'Property Values and Race', in W.L.C.Wheaton et al. (Eds.), Urban Housing, 286.
 125. W.M.Ladd, 'The Effect of Integration on Property Values', The American Economic Review, (September 1962), (52), (4), 805.
 126. D. McEntire, Residence and Race, 159-160.
 127. L. Laurenti, 'Property Values and Race', 287.
 128. N.P.Gist and S.F.Fava, Urban Society (New York, Thomas Y.Crowell Company, Sixth Edition, 1974), 220.
 129. See above, 100, f/n. 93.

The Commission saw such action as a 'manifestation of the ordinary instinct to make money.'¹³⁰ But it must be remembered that only a small group of wealthy Indian businessmen who considered economic opportunities limited acquired property in European residential areas as investment.¹³¹ The majority of Indians were either professionals or working-class people who wished to acquire homes in keeping with their improved standards of living. In most cases such homes were in predominantly European areas. The Commission seemed to have based its conclusion on the single set of statistics that of 512 subdivisions acquired in the Old Borough 362 were not in Indian occupation.¹³²

This conclusion is perplexing. The bulk of the evidence presented by Indian organisations and others showed conclusively that there was a serious lack of housing, civic amenities and choice sites for Indians in Durban.¹³³ D.G.Shepstone, one of the members of the Natal Indian Judicial Commission, also expressed the opinion that Indian acquisition of property was related to genuine housing needs.¹³⁴

130. I.P.C.Report(UG 39/1941, 25.7.41), para. 336, 76.

131. In this connection see, Hancock, Smuts: The Fields of Force: 1919-1950, 458; E.E.Kharsany, 'A Profile of the South African Indian Business Community - Reasons for Success and Failure' (University of Witwatersrand, Unpublished MBA thesis, 1971), 24; G.Heaton-Nicholls, South Africa in My Time (London, George Allen and Unwin Ltd., 1961), 316; I.P.C., Minutes of Evidence, Vol.47, 2.4.1941, 1798; I.P.C., Minutes of Evidence, Vol.48, 3.4.1941, 1860.

132. I.P.C.Report (UG 39/1941), 25.7. 41), para. 327, 74.

133. See above, 100, f/n. 95.

134. Union of South Africa, Interim Report of Commission of Enquiry into Matters affecting the Indian Population of the Province of Natal (UG 22/1945, 16.3.45), Appendix B (1), 19.

The Commission clarified a misconception among Whites about the attitude of Indians in regard to residential juxtaposition with Europeans. The Commission emphatically stated: 'We do not believe there is any general desire on the part of Indians to live among Europeans.' ¹³⁵

In evaluating the work of the Commission, it must be stated at the outset that it had undoubtedly executed its task thoroughly. ¹³⁶ Although Calpin wreathes with laurels Kajee's contribution in presenting the N.I.C. case for the Indians, ¹³⁷ Sorabjee Rustomjee of the N.I.A. deserves similar plaudits. Neither of them was schooled in the law; yet their presentation of evidence and their mental adroitness in cross-examining witnesses was an exhibition of legal expertise and dexterity. They richly deserved the Chairman's laudatory acknowledgement of their contribution to the Commission.

The findings of the Commission were impartial ¹³⁸ and authoritative. The Commission's Report focussed the spotlight on the whole issue categorically dismissing the popular and gross exaggerations

135. I.P.C. Report (UG 39/1941, 25.7.41), para. 338, 76.

136. Palmer, The History of the Indians in Natal, 118; see also, Hancock, Smuts: The Fields of Force: 1919-1950, 459; 'Indians in South Africa', The South African Outlook, (1.7.1942), (LXX11), 120.

137. Calpin, A.I. Kajee, 122.

138. Pachai, The South African Indian Question, 162.

of 'Indian penetration' of predominantly European areas both in the Transvaal and Natal.¹³⁹ It dispelled the arguments used by Whites generally that Indians desired to 'oust the European or to live among Europeans'¹⁴⁰ as specious. The Report was also indicative of a total failure on the part of those who railed most vociferously against 'Indian penetration' 'to give any careful objective thought to the subject.'¹⁴¹

The Commission rightly emphasised the abnormality of the theory in the displacement of communities in urban centres as applicable to Durban. In the spatial development and growth of urban sprawl 'invasion-and-succession' were considered a concomitant phenomenon world wide. In terms of economic strata, the invading group is generally of a lower rung than the resident group. In Durban, however, the 'penetrating' Indian group was to some degree of a higher economic status than the resident White group which they succeeded. A lower status was imputed to the Indians because of racial prejudice. So a paradoxical situation obtained: the relatively poorer community who would normally be the 'invaders' were leaving the residential area being succeeded by the comparatively wealthier group. As Rajah correctly points out, if the poorer Whites were the invading community the process would have been accepted without question.¹⁴²

139. The Leader, 25.1.1941, 4; see also, Hancock, Smuts: The Fields of Force: 1919-1950, 459.

140. The Forum, Editorial, (18.4.1942), (V), (3), 3.

141. Race Relations News, (November 1941), (III), (11), 7.

142. D.S. Rajah, 'The Durban Indian Central Business District - A Study in Urban Geography' (University of Natal, Durban, Unpublished M.A. thesis, 1968), 40.

It is difficult to appreciate, however, that despite the corpus of evidence concerning the lack of housing and amenities and the niggardliness of the Council in the provision of choice sites for Indians, the D.C.C. was exonerated of any neglect. It must be noted that next to the desire for investment, these were given as the most important reasons for 'penetration' by the Commission.

The Commission correctly assessed the situation that paucity of economic opportunities led the Indians to invest in trade and property. But in considering this factor as a major cause the 'Commission overstated the case.'¹⁴³ The Commission ignored its own conclusion:

'All people, irrespective of race or colour, desire to improve their material position. Indians who have commenced occupation of trading or residential sites in the predominantly European areas...have been impelled by motives which are not peculiar to them as Indians but which are the heritage of all virile peoples.'¹⁴⁴

In the Durban milieu racial overtones were ascribed to an otherwise normal economic growth pattern of most communities.

The Commission also established irrefutably that the Indians preferred 'to live among their own people.'¹⁴⁵ This was an example of 'natural' segregation¹⁴⁶ as depicted in many cities around the world, e.g., New York, where people of different cultures cluster with their own kind. No compulsion is exerted. The Durban City Council arraigned the Indian community for being inconsistent 'with the communal instinct

143. Maasdorp and Pillay, Urban Relocation and Racial Segregation: The Case of Indian South Africans, 86.

144. I.P.C.Report(UG 39/1941, 25.7.41), para. 201, 44.

145. Ibid., para. 324, 73 and para. 338, 76.

146. L. Kuper et al., Durban: A Study in Racial Ecology, 144.

implanted in all human beings.' ¹⁴⁷ They claimed that the acquisition and occupation of property in predominantly European areas was a violation of this instinct. The inevitable conclusion is that in pressing for the appointment of the Indian Penetration Commission the D.C.C. was in fact supporting a 'rationale for segregation'. ¹⁴⁸ In other words, the creation of the Commission together with its terms of reference to enquire into reasons for the penetration, ipso facto, implied that any aberration from racial segregation required explanation. The D.C.C. little expected the outcome of the Broome Commission.

The First Broome Commission Report evoked joy and optimism amongst Indians in South Africa. ¹⁴⁹ But its reception in India was tinged with a measure of pessimism. It was hoped that the results of this impartial enquiry would prove to be 'the quietus to any renewed anti-Indian agitation in South Africa.' ¹⁵⁰ But the Right Hon. V.S.S. Sastri, the first Agent of the Government of India in South Africa, prognosticated:

'It would be a mistake to think that the trouble which led to the appointment of this commission is over. White people in South Africa reject the testimony of facts without hesitation.' ¹⁵¹

147. I.P.C. Report(UG 39/1941, 25.7.41), para. 318, 72; see also, D.C.C.'s First Memorandum to the I.P.C., 27.8.1940, 7.

148. L.Kuper et al., Durban: A Study in Racial Ecology, 144.

149. See, The Leader, 18.10.1941, 2-4, for the comments by Indian leaders.

150. Joshi, The Tyranny of Colour, 284.

151. Ibid., 285; see also, The Leader, 29.11.1941, 1.

Subsequent events proved that Sastri had assessed the situation correctly. The D.C.C. claimed that 'Indian penetration' had increased in the Durban area since the findings of the Broome Commission had been made public. On 7 December 1942¹⁵² a Durban City Council deputation accompanied by the Natal Provincial Council Executive Committee met the Minister of the Interior, H.G. Lawrence, to discuss the issue.¹⁵³ As a result of the representations made by this deputation, Justice F.N. Broome was appointed as a one-man Commission¹⁵⁴ to :

'enquire into and report whether, and, if so, to what extent, Indians (including companies with predominantly Indian directorates) have, since the 30th September 1940, in the Municipal Area of Durban, acquired sites in those areas which a previous commission, known as the Indian Penetration Commission...found to be predominantly European on the 1st day of January, 1927.'¹⁵⁵

The Minister of the Interior stated that the Commission had been asked 'to decide on a crisp point, namely, has penetration taken place or not?'¹⁵⁶ This was emphasised in Justice Broome's gambit when the Commission opened at ten o'clock in the morning on Tuesday, 16 March 1943:¹⁵⁷

152. This date was agreed upon to enable the Provincial Council Executive to attend. N.A., Vol.71, File 527(9) (D.C.C., T.C.O.), Telegram: The Minister of the Interior - The Town Clerk, Durban, 25.11.1942.

153. The Natal Daily News, 8.12.1942; see also, Minutes of the Durban City Council, 5.2.1943, 200; Mayor's Minutes for the Year-Ending, 30.9.1943, 16-17; N.A., Vol.71, File 527(9) (D.C.C., T.C.O.), Memorandum to the Durban City Council's Deputation, 11.11.1942.

154. The Natal Daily News, 12.12.1942; see also, Indian Opinion, 18.12.1942, 389.

155. Union of South Africa, Government Gazette (Govt. Notice, 327, 19.2.1943) (CXXXI), (3154), 19.2.1943, 254-255.

156. The Leader, 20.3.1943, 4.

157. N.A., Vol.71, File 527(9) (D.C.C., T.C.O.), F.N. Broome - Town Clerk, Durban, 1.3.1943.

'It will be seen that I am directed and authorised to enquire solely into a fairly simple question of fact.'

He added:

'The sole scope of the present enquiry is to investigate the acquisitions by Indians in [areas which were predominantly European] between or since the 30th September, 1940.'

And he felt that the investigation was 'largely a matter between the City Council of Durban and the Representatives of the Indian Community.' 158

The Natal Indian Association deprecated the parochialism of the terms of reference and withdrew its participation. 159 The N.I.A. complained that the investigation was restricted to the Old Borough; that occupation as distinct from ownership and reasons therefor were excluded; that apart from the injustice implicit in such limitations the Indian community was placed in a disadvantageous position. They felt:

'The Indian Community, now, as before, regards itself as being put on trial, and the denial to them of the elementary principle of answering the charge is regarded by our people as inherently inequitious.' 160

158. N.A., Vol. 72, File 527 (III) (D.C.C., T.C.O.), Transcript of Evidence, Second Broome Commission (S.B.C.), 16.3.1943, 1-2. The Natal Archives has the transcripts of evidence for 16.3.1943 and 17.3.1943; the author has in his possession those for 18.3.1943 and 19.3.1943.

159. N.A., Vol. 71, File 527(10) (D.C.C., T.C.O.), Statement submitted by Natal Indian Association to the Hon. Justice F.N. Broome, 16.3.1943; see also, Transcript of Evidence, S.B.C., 16.3.1943, 9-12; The Leader, 20.3.1943, 1; Indian Views, 19.3.1943, 3.

160. Transcript of Evidence, S.B.C., 16.3.1943, 10.

The N.I.A. emphasised that the complaint of the community was not against the Commission but to the method of its enquiry. The N.I.C. also recorded its 'protest and deplored the limited terms' ¹⁶¹ of the Commission, but did not object to remaining and giving evidence before the Commission.

The D.C.C. presented its memorandum with statistics compiled from the registered deeds of transfer supplied by the Registrar of Deeds. ¹⁶² It stated that during the period under review Indian acquisition of subdivisions increased in the ratio 1:2,5; purchase price 3,4 times the previous figure; rateable values 2,9 times the former figure.

The N.I.C. argued that while the Indian population constituted 25,5 per cent of total population in the Old Borough Indian acquisitions were 9 per cent and 12,2 per cent in terms of rateable value and number of subdivisions respectively. ¹⁶³ Kajee maintained that in proportion to the population the figures indicated that the acquisitions by Indians were small 'that it cannot constitute a danger to the European economic position.' ¹⁶⁴ The N.I.C. also made the point that the recent acquisitions from Europeans were really adjacent properties to those purchased prior to October 1940, ¹⁶⁵ 'filling in the gaps' as it were. Kajee alleged that the D.C.C. was no longer hiding behind its mask of impartiality; it was openly partisan towards the European burgesses. ¹⁶⁶

161. Ibid., 13-14; see also, I.A.P., N.I.C., First Memorandum and Schedules submitted to the Hon. Justice F.N. Broome, K.C., M.C., 16.3.1943, para. 2, 1. For a further copy of the Memorandum see, UNISA, Accession 105, 7.3.5; see also, Indian Views, 19.3.1943, 3.

162. N.A., Vol. 71, File 527(9) (D.C.C., T.C.O.), Memorandum presented on behalf of the Durban City Council to the Honourable Francis Napier Broome, K.C., M.C., 22.2.1943.

163. N.I.C., First Memorandum and Schedules 16.3.1943, para. 9 and 12, 4-5.

164. Transcript of Evidence, S.B.C., 18.3.1943, 10; see also, I.A.P., Final Statement and Schedules submitted to the Hon. Justice F.N. Broome, K.C., M.C., 18.3.1943, para. 9, 3.

165. N.I.C., First Memorandum and Schedules, 16.3.1943, para. 18, 8.

166. Transcript of Evidence, S.B.C., 18.3.1943, A3.

Attention was focussed on the A.L.Block ¹⁶⁷ where the greatest number of acquisitions, 78 in all, had occurred from October 1940 to February 1943. ¹⁶⁸ Kajee indicated that Europeans were reluctant to purchase properties in that area. Building Societies and financial institutions ¹⁶⁹ considered the area suitable for the expansion of the Indian community. ¹⁷⁰ Advances were made to Indians to purchase property in the area on mortgage bonds. The Building Societies however had made it quite clear on previous occasions that no loans would be granted to Indians for the purpose of assisting them to acquire properties in predominantly European areas. ¹⁷¹ The obvious conclusion was that the financial institutions did not consider the A.L.Block to be predominantly European any longer.

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167. This is the area in the Lower Berea roughly bounded by Haden Road, Currie Road, Windermere Road and Gordon Road. Contiguous to the A.L. Block is the A.K.Block bounded by Alice Street, Umgani Road and Mitchell Road.
168. N.A., Vol. 71, File 527(10) (D.C.C., T.C.O.), Memorandum by W.L. Howes to Town Clerk, Durban, Second Indian Penetration Commission, 29.3.1943, 2.
169. D. McEntire, Residence and Race, 218-219, where he maintains institutional lenders traditionally grant loans to non-Whites for occupancy of homes located in a recognised minority residence area. In San Francisco, for example, financial institutions lend money freely to Negroes satisfying requirements of income, credit rating and so on, and provided that the property securing the loan is situated within an established Negro neighbourhood. See 225-228 for specific examples in other areas cited by McEntire.
170. Transcript of Evidence. S.B.C., 18.3.1943, 11. Rajah explains that the A.K.Block with a high incidence of malaria and an unhealthy microclimate was inhabited by Indians when Europeans went to more desirable suburbs. Rajah, 'The Durban Indian Central Business District: A Case Study in the Geography of Apartheid', 164; see also, Maasdorp and Pillay, Urban Relocation and Racial Segregation: The Case of Indian South Africans, 88.
171. Transcript of Evidence, S.B.C., 18.3.1943, A43; see also, M. Russell, 'A Study of a South African Interracial Neighbourhood' (University of Natal, Durban, Unpublished M.A. thesis, 1961), 29, f/n.2; L. Kuper et al., Durban: A Study in Racial Ecology, 158.

Before concluding evidence Kajee accused the D.C.C. of deliberate misrepresentation. During the interview with the Minister on 7 December 1942, the D.C.C. deputation had presented him with a map which depicted property acquired by Indians. The map was misleading in that all properties acquired from 1860 to 1 October 1940 by Indians in the Durban area were shown on the map as being acquired in the period 1 January 1927 to 30 September 1940. Kajee averred:

'Now, Sir, here this grievous injustice and unrighteous thing was done to us as a result of which the Minister was motivated to appoint you as Commissioner to enquire into this penetration.' 172

Warned by Howes that 'no privilege was attached to the proceedings' and advised by Justice Broome to consider carefully that 'the inaccuracy was deliberate or intentional on the part of anyone' Kajee stood his ground and reiterated:

'With all submission I will say that what was put on the map was deliberate, because it could not be otherwise.' 173.

172. Transcript of Evidence, S.B.C., 19.3.1943, A111; see also, The Natal Mercury, 20.3.1943.

173. Transcript of Evidence, S.B.C., 19.3.1943, A113.

Howes explained that the deputation had drawn the Minister's attention only to acquisitions which had taken place after 1 October 1940.¹⁷⁴ He conceded that the legend on the map was incorrect due to the haste in which the map was prepared.¹⁷⁵ Whether the error was intentional or otherwise, Kajee's conclusion that the Minister was prompted to appoint the Commission on the basis of the map was probably correct. The mass of colour on the map representing acquisition of property by Indians could have been the impetus needed to sway the Minister in favour of the D.C.C. representation.

The Commission was appointed on the 12 February 1943; it sat for four days from 16 March 1943 until 19 March 1943 and presented its report on 25 March 1943. Broome deemed it necessary to expedite the findings to obviate their becoming obsolete before the report appeared.¹⁷⁶ The celerity of the Commission's task may also have been due to the fact that the Commission did not have to investigate the reasons for 'penetration'.

174. Ibid., A116.

175. The Minister was accordingly informed of the error:

N.A., Vol. 72, File 527(iv) and (v) (D.C.C., T.C.O.), Town Clerk, Durban - Minister of the Interior, 20.3.1943. Mr Howes also demanded and received a written apology from Mr Kajee under threat of being sued for damages for defamation. N.A., Vol. 71, File 527 (10) (D.C.C., T.C.O.), Memorandum by W.L. Howes to Town Clerk, Second Indian Penetration Commission, 29.3.1943, 3.

The Commission in its report accepted the Council's explanation that the mis-statement was not deliberate and did not affect the conclusions. Union of South Africa, Second Indian Penetration (Durban) Commission Report (UG 21/1943, 25.3.43), para. 29, 6.

176. Broome, Not the Whole Truth, 187.

The Commission found that during the period under review 106 sites in 'A' areas, 38 in 'B' areas and 182 in 'C' areas had been acquired by Indians in the areas of the Old Borough which were predominantly European on 1 January 1927. ¹⁷⁷ Another important point is that, as the N.I.C. pointed out, only 54 of the 326 sites were occupied by Indians. ¹⁷⁸ Contemporaneous with such purchases, sixteen sites had been sold by Indians to Europeans in that area. ¹⁷⁹

177. The Statistics are as follows:

	No of Sites	Purchase Price	Rateable Value
1940 (Oct-Dec)	12	£10 370	£ 7 550
1941	77	153 045	116 560
1942	195	336 500	241 200
1943 (Jan-Feb)	42	101 470	64 550
Total, Oct 1940 - Feb 1943	326	£601 385	£429 860
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Second Indian Penetration (Durban) Commission Report (UG 21/1943, 25.3.43), para. 16, 3. For definition of 'A', 'B' and 'C' areas see above, 99, f/n. 90.

178. Statement on the alleged question of Indian penetration (N.I.C., 1943), para. 15; see also, Pachai, The South African Indian Question, 166; Maasdorp and Pillay, Urban Relocation and Racial Segregation: The Case of Indian South Africans, 87.

179. The figures for these transactions were:

	No of Sites	Purchase Price	Rateable Value
1940 (Oct-Dec)	1	£ 675	£ 450
1941	11	19 780	15 350
1942	2	3 270	1 900
1943	2	1 800	1 470
Total, Oct 1940 to Feb 1943. 16		£25 525	£19 170
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Second Indian Penetration (Durban) Commission Report (UG 21/1943, 25.3.43), para. 16, 3.

Considering the A.L.Block it was noted that on 1 January 1927 it was an exclusively European residential area. But Building Societies were now beginning to grant loans to Indians to purchase properties in this area.¹⁸⁰ The Commission was not able to decide with any degree of finality the attitude of the financial institutions granting loans to Indians in order to acquire properties in this locality. The Commission concluded, nevertheless, that 'if the allegation is correct, it would appear that the Building Societies do not consider Block A.L. to be a predominantly European area.'¹⁸¹

Mrs Ballinger correctly criticised the highlighting of the A.L.Block. This was the worst area of 'penetration' and the addition of other areas and maps would have given a balance and proper perspective to the issue.¹⁸²

Referring to the increased acquisitions of property during the period under review the Commissioner reiterated the desire to invest as motivation by Indians to purchase property, because of limited economic opportunities. He added that Indians may have misconstrued the summary of the previous Commission's report, viz., that 'no penetration' had occurred. Indians may have concluded that having been acquitted of the charge of 'penetration' they could purchase property in European areas

180. See above, 117; see also, T.R.H.Davenport, South Africa, A Modern History (Johannesburg, Macmillan(South Africa), 1978), 249-250.

181. Second Indian Penetration(Durban)Commission Report (UG21/1943,25.3.43), para. 22, 5.

182. Hansard, Debates of the House of Assembly, Vol.46, 16.4.1943, Col. 5565. See also, Hansard, Debates of the Senate, 24.4.43, Col.2078 for Senator E.H.Brookes' criticism of such a presentation also.

ad lib. He surmised that the 'Indian Community is anxious to pass through the door while it is still ajar.'¹⁸³ But the door was not to remain 'ajar' for long.

The general Indian reaction was one of impenetrable gloom and dismay. They criticised the enquiry as being limited in scope. They argued that any clerk in the Department of the Interior could have verified the figures.¹⁸⁴ Both the N.I.C. and the N.I.A. contended that the Commission was examining the situation in ignorance of the pressures which precipitated the increased acquisition of properties by the Indian community.¹⁸⁵ Further the tenor of the Report was such that the burden of penetration was laid on the Indian purchaser, not the White seller.¹⁸⁶

The outcome of the findings of the Commission boded ill for relations between India and South Africa. The Central Legislative Assembly in New Delhi promulgated the Indian Reciprocity Act in March 1943. This legislation was directed at 'imposing the same restrictions on South African Europeans in India as were imposed on South African Indians in South Africa.'¹⁸⁷ At the same time, Swami Bhawani Dayal, the

183. Second Indian Penetration(Durban) Commission Report (UG 21/1943, 25.3.43), para. 27, 6.

184. The Leader, 13.3.1943, 5.

185. See relevant statements apropos Second Broome Commission in various paragraphs of: Statement on the alleged question of Indian Penetration (N.I.C. 1943); see also, A Refutation of the European Agitation against "Indian Penetration" (N.I.A., 1943), 7-9.

186. Maasdorp and Pillay, Urban Relocation and Racial Segregation: The Case of Indian South Africans, 87.

187. Pachai, The South African Indian Question, 163. It is interesting to note that the terms of the Act were only imposed in 1944 when the Pretoria Agreement failed and the Residential Property Regulation Ordinance was promulgated by the Natal Provincial Council. See, Ibid., 178-179 and below Chapter Six, 237 for more details.

the N.I.C. agent in India, appealed to the Viceroy of India to press for the appointment of a Commission to investigate the disabilities and grievances of Indians in South Africa. He suggested also that a round table conference between India and the Union should be convened. Should these overtures be unsuccessful, he recommended that the High Commissioner for India in South Africa be recalled. ¹⁸⁸

But in South Africa the 'crisp issue' was finalised. The First Broome Commission had provided no 'political argument for restrictive legislation.' ¹⁸⁹ The Report of the Second Broome Commission, however, unleashed broadcast fulmination against 'Indian penetration' by White anti-Indian agitators. ¹⁹⁰ The Government became anxious. On 22 March 1943 the Minister of the Interior, H.G. Lawrence, made a minatory statement in the Senate that 'while he did not commit himself to introducing legislation this session, he made it clear that the Government had every intention of intervening in a position that appeared to be getting out of hand,...' ¹⁹¹ He hinted that such legislation would, if enacted, 'peg' the position of land ownership and occupation

188. N.A., Vol. 71, File 527(10) (D.C.C., T.C.O.), Statement by Swami Bhawani Dayal, New Delhi, 3.4.1943; see also, The Natal Mercury, 5.4.1943.

189. L. Kuper et al., Durban: A Study in Racial Ecology, 151.

190. The typical attitude was summed-up by A. Goldberg (M.P., Durban, Umlazi) in his speech in the House of Assembly:

There has been 'a desire to sweep Natal with the new Broome Commission, instead some members have succeeded in making sweeping generalisations.'

Hansard, Debates of the House of Assembly, Vol. 46, 19.4.1943, Col. 5788.

191. The Natal Daily News, 23.3.1943; see also, Editorial comment.

to prevent the escalation of 'penetration' and would be retrospective from 22 March 1943.¹⁹²

When the findings of the Commission were made public on 6 April 1943, the die was cast. Smuts had to assuage the White electorate in order 'to stabilize the Indian situation in Durban.'¹⁹³ The Government introduced the Trading and Occupation of Land (Transvaal and Natal) Restriction Bill on 7 April 1943. This legislation came to be dubbed the 'Pegging Act' when it was finally passed, because it was an interim measure designed to 'peg' the situation of 'Indian penetration' in Durban.

The First Broome Commission Report showed incontrovertibly that the claims of the D.C.C. and White agitators against 'Indian penetration' were exaggerated. In turn such Whites discounted the Report in ridicule.¹⁹⁴ Renewed agitation had forced Smuts's hand. The Second Broome Commission was appointed to determine the 'crisp point': whether 'penetration' had taken place since the First Broome Commission. No cognizance was taken of the possible reasons for any such acquisitions.

Up until 1943 the international implications of the war effort and his delicate relations with India restrained Smuts from introducing legislation to restrict the rights of Indians to property in Durban. Now an election was imminent and he had to play to his electorate. Considerations of foreign policy were subordinated to domestic expediency. International rapport with India seemed no longer a pre-eminent or a crucial issue. And so Smuts capitulated to local prejudice.

192. Indian Views, 26.3.1943, 3.

193. J. van der Poel (Ed.), Selections from the Smuts Papers (Cambridge, University of Cambridge Press, Vol. VI, 1973), 425.

194. Calpin, Indians in South Africa, 168.

CHAPTER FOUR

THE SWORD OF DAMOCLES - EXPROPRIATION SAGA OF THE DURBAN CITY COUNCIL

While the investigations of the Broome Commissions were in progress, the Indian community was also embroiled in a struggle to prevent the Durban City Council from expropriating Indian-owned property in Riverside, Sydenham, Springfield, Merebank and Wentworth. The expropriation saga of the D.C.C. demonstrated utterly callous and cynical disregard for the susceptibilities of the Indian community. A spirited protest was exhibited by the Indian community against an attempt to oust Indians from localities in which they had lived for generations and to effect segregation without the force of law.¹ The 'Nationalist Bloc' of the N.I.A. considered the decision of the D.C.C. as a 'shameless breach of faith in the spirit of compromise' as it had been agreed by the N.I.A. and the D.C.C. that the status quo in regard to residential rights would be maintained pending the findings of the Indian Penetration Commission.² The whole episode revealed a weathering of rights and erosion of principles. Indian opposition obtained a reprieve. The prerogative of expropriation granted to the Durban City Council hung like a veritable sword of Damocles over the Indian community, even in areas that were predominantly Indian.

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1. N.A., Vol. 85, File 643J/SJ/MW(1) (D.C.C., T.C.O.), Riverside-Briardene and District Indian Ratepayers' Association - Administrator of Natal, 17.2.1941, in Memo for Special Committee re Housing, 25.3.1941, Annexure D, 2; see also, D.C.C.'s Fourth Memorandum to the I.P.C., 22.4.1941 for a further copy of the Memo; Indian Opinion, 28.2.1941, 68; P.S. Aiyar, Conflict of Races in South Africa: Long-Range Segregation Programme (Durban, African Chronicle Printing Works, 1946), 11.
 2. Indian Views, 28.2.1941, 2.

Most researchers have made but a passing reference to this expropriation scheme of the Durban City Council.³ The scheme to usurp Indian-owned lands must rank as a high-water mark in anti-Indian rancour in Durban. The manner in which the Indian community attempted to protect their home and hearth deserves close study.

The Council proposed to acquire 2125 acres of land in Riverside, Merebank/Wentworth, Sydenham and Springfield⁴ in terms of Section 11

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3. For example, Pachai refers to the expropriation scheme in dealing with the work of the Lawrence Committee. Incidentally, he gives the date of the Council's proposals as July 1942. But the decision to expropriate Indian-owned properties in the various areas was taken much earlier. Pachai, The South African Indian Question, 159. See also: N.A., Vol. 71, File 527(12) (D.C.C., T.C.O.), The Town Clerk, Durban - Natal Indian Judicial Commission, 13.7.1944, 5-9, where it is shown that initial efforts were made on 9.5.1933 to remove residents because of slum conditions.
4. The breakdown of the acquisitions was as follows:

Area	Total acres	European	%	Indian	%
Riverside	603	278	46	325	54
Merebank/ Wentworth	1 285	656	51	629	49
Sydenham(Sparks Extension)	73	30	41	43	59
Springfield Extension	129	36	28	93	72
Sydenham(European)	35	30	86	5	14
Total:	2 125	1030	49	1095	51
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I.A.P., Memorandum of the Natal Indian Association submitted to the Secretary for Public Health setting forth its objections to the Expropriation Proposals of the Durban City Council, 22.12.1941; see also, I.A.P., Memorandum from the Natal Indian Congress in Support of its Protest against the Intention of the Durban Corporation to Expropriate Indian Owned Land, 10.5.1941, 1.

For further copies of the memoranda see:

N.A., Vol. 85, File 643 J/SJ/MW(2) (D.C.C., T.C.O.). For a copy of the N.I.A. memorandum see also, K.C.L., K.C.M. 30578 (A.M.C. Maytom Papers).

of the Housing Act No.35 of 1920.⁵ The acquired lands were to be utilised for the housing of Europeans, Coloureds and Indians.⁶ The Council intimated that the intended acquisitions were to constitute an integral part of its comprehensive housing programme.⁷ The programme was adopted by the Council on 10 November 1939 and submitted to the Central Housing Board for its ratification on 16 November 1939. The housing programme was to extend over eight years from 1940/41 to 1947/48 and was designed to provide houses for all sections of the population

5. For relevant details see:

M.Nathan and E.N.Thornton (Eds.) The Public Health, Housing and Slums Acts of the Union of South Africa with Regulations and Commentary (South Africa, Central News Agency, Third Edition, 1941), 323; Memorandum of the N.I.A. submitted to the Secretary for Public Health, 22.12.1941, 2.

6. The distribution was to be as follows:

Area	Total Acres	Housing Purposes.					
		European		Indian		Coloured	
		Acres	%	Acres	%	Acres	%
Riverside	603	603	100				
Merebank/ Wentworth	1285			1050	82	235	18
Sydenham (Sparks Extension)	73					73	100
Springfield Extension	129			129	100		
Sydenham (European)	35	35	100				
	2125	638	30	1179	55	308	15

N.A., Vol.85, File 643 J/SJ/MW(1)(D.C.C., T.C.O.), The Town Clerk, Durban - The Secretary for the Interior, 12.3.1941, in Memo for Special Committee re Housing, 25.3.1941, 2; see also, D.C.C.'s Fourth Memorandum to the I.P.C., 22.4.1941, 2; Memorandum from the N.I.C. in Support of its Protest, 10.5.1941, 1; I.P.C., Minutes of Evidence, Vol.48, 3.4.1941, 1871-1872.

7. Minutes of the Durban City Council, 10.1.1941, 451.

in Durban.⁸

Immediately the plans of the D.C.C. became known objections were raised by Indian residents in all the affected areas. The N.I.A. contended that the D.C.C. was not acting in the best interests of the Indian community but was determined to acquire 'such of the properties which could be made into European localities.'⁹ Indians in the Sydenham area, for example, were apprehensive that having lived in the area for more than fifty years, they were now going to be dehousing. They also saw the move as an aggravation of the housing problem for the Indian community.¹⁰ Similar views were expressed by the residents of Riverside - Briardene.¹¹ The Merebank Indian Ratepayer's Association convened a mass meeting on 23 February 1941 to protest 'against the action of the Durban City Council in its attempt to expropriate properties in this area predominantly Indian owned' and construed such a manoeuvre as 'calculated to force the degradation of segregation upon the Indian community,...'¹²

8. The programme included:

Sub-economic:

3350 houses and hostel accommodation to provide 6300 beds at an estimated cost of £1 698 000

Economic:

5124 houses at an estimated cost of £3 848 000

Total 5 546 000

The Town Clerk, Durban - The Secretary for the Interior, 12.3.1941, 3; see also, D.C.C.'s Fourth Memorandum to the I.P.C., 22.4.1941.

9. N.A., Vol. 85, File 643J/SJ/MW(1) (D.C.C., T.C.O.), N.I.A. - The Secretary for the Interior, 30.1.1941.
10. N.A., Vol. 85, File 643J/SJ/MW(1) (D.C.C., T.C.O.), Sydenham Indian Landowners' Association - The Minister of the Interior, 7.2.1941, in Memo for Special Committee re Housing, 25.3.1941, Annexure C.
11. N.A., Vol. 85, File 543J/SJ/MW(1) (D.C.C., T.C.O.), Riverside - Briardene and District Indian Ratepayers' Association - Administrator of Natal, 17.2.1941, in Memo for Special Committee re Housing, 25.3.1941, Annexure D.
12. N.A., Vol. 85, File 643J/SJ/MW(1) (D.C.C., T.C.O.), Merebank Indian Ratepayers' Association - The Town Clerk, Durban, 26.2.1941; see also, Memo for Special Committee re Housing, 25.3.1941, Annexure G; Indian Opinion, 28.2.1941, 68; The Leader, 1.3.1941, 5.

The N.I.A. categorically stated that the D.C.C. possessed adequate, unalienated land in all the affected areas. Moreover, the Council had undeveloped land which could easily be sold for development purposes.¹³ The process of expropriating land in the possession of Indians by the D.C.C. was not an innovation. Indians had been removed from such areas as Mayville, Bell Street, the Point, Berea Flats, Orient Lane and Kirkwood Avenue¹⁴ in terms of the Slums Act No.53 of 1934. These areas in their entirety were made available to European residents after the Council had improved them. This was the burning issue: that Indian-owned property was expropriated and given to Europeans.

The 'Nationalist Bloc' of the N.I.A. called on the community 'to resist encroachments' on vested interests and demanded treatment from the City Council 'in the same manner as the European ratepayers.'¹⁵ It also called upon the N.I.A. to lead the struggle on behalf of all ratepayers. The N.I.A. commenced the struggle by convening a mass

13. Indian Views, 28.2.1941, 2; see also, N.A., Vol.85, File 643J/SJ/MW (1) (D.C.C., T.C.O.), N.I.A. - Administrator of Natal, 17.2.1941, in Memo for Special Committee re Housing, 25.3.1941, Annexure E.

14. Indian Opinion, Editorial, 28.2.1941, 66; see also, I.P.C., Minutes of Evidence, Vol.48, 3.4.1941, 1867; N.I.C., First Statement to the I.P.C., 2.4.1941, 8.

15. Indian Opinion, 28.2.1941, 67.

meeting at the City Hall on 2 March 1941. Sorabjee Rustomjee forcefully condemned the attempt of the City Council to expropriate Indian-owned property in the various areas where Indians had 'formed a well-established settlement for over 50 years.'¹⁶ He stated:

'The object of the Council is to oust Indians from these areas, and this meeting emphatically declares that the action is unwarranted, repressive in character, and a wanton attempt at spoliation, disregarding the vested interests of thousands of Indians resident in those areas.'¹⁷

The Mayor of Durban, Mr Rupert Ellis-Brown, denied that any attempt was being made by the Council to 'oust' Indians from their properties.¹⁸ The Mayor was sanguine that the housing schemes proposed by the Council would redound to the benefit of the Indian community by way of better facilities because of modern town planning.¹⁹ He condemned the opposition against expropriation as 'a misapprehension of

16. Indian Views, 7.3.1941, 2.

17. The Natal Daily News, 3.3.1941; see also, N.A., Vol.85, File 643 J/SJ/MW(1) (D.C.C., T.C.O.), N.I.A. - The Town Clerk, Durban, 8.3.1941, in Memo for Special Committee re Housing, 23.3.1941.

18. The Natal Mercury, 4.3.1941.

19. Ibid.

the true facts which aim at providing the Indians with far better accommodation than they at present enjoy.' ²⁰ The Indian Opinion differed. It regarded the expropriation of Indian-owned land as 'bare faced injustice of the City Council.' ²¹ The N.I.C. argued that the record of the City Council in providing housing for Indians was depressing. One hundred and twenty five houses built at a cost of £73 393 constituted 'the sum total of the City Council's efforts for the 90,000 Indian residents in Durban,....' ²²

The D.C.C. had decided to suspend the demolition of premises in terms of the 'Slums Act' for the duration of the war. Yet in planning to expropriate Indian property and thereby displacing hundreds of Indians to accommodate Europeans and Coloureds, the D.C.C. was being inconsistent. ²³ In the Riverside scheme alone some 1 500 houses were to be provided for Europeans, while approximately 4 000 Indians were going to lose their homes. ²⁴

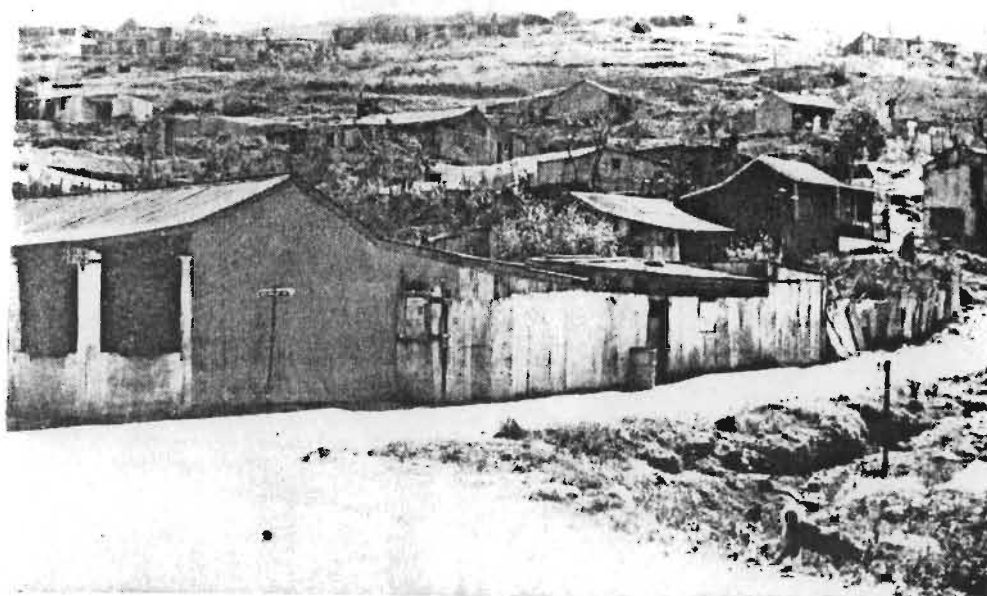
20. Ibid.

21. Indian Opinion, 7.3.1941, 73.

22. N.A., Vol. 85, File 643J/SJ/MW(1) (D.C.C., T.C.O.), N.I.C. - The Town Clerk, Durban, 3.3.1941, in Memo for Special Committee re Housing, 23.3.1941, 2; see also, Indian Opinion, 14.3.1941, 84; D.C.C.'s Fourth Memorandum to the I.P.C., 22.4.1941. These figures were for the period ending 31.12.1939 extracted from the Central Housing Board Report. Expenditure for 86 000 Europeans as at 30.12.1939 was £625 851; N.I.C. - The Town Clerk, Durban, 3.3.1941.

23. Ibid.

24. Indian Views, 14.3.1941, 3.



A view of Indian workers' homes at Riverside,
Durban.

SOURCE: How We Live...An Album of Photographs
showing the Living Conditions of the
Indian People in South Africa (Durban,
Joint Passive Resistance Council, n.d.).

Another group of workers' homes at Riverside,
Durban.



On 31 March 1941 the representatives of the N.I.C. and the N.I.A. met the Special Committee re Housing.²⁵ P.R.Pather, for the N.I.A., was unequivocal in his comment:

'We as an Indian community are very suspicious of the whole scheme. When we look back on the bitter experience that we have had at the hands of the Durban City Council and the Slums Act, we feel that there is something underlying this big housing scheme, in short, to take away our people from one district and place them in another.'²⁶

He also expressed the opinion that the Council was intent on transposing Indians to the extremities of the City proper.²⁷ T.M.Naicker, speaking as a ratepayer of the Riverside-Briardene District, reiterated the argument that the area was among the first Indian settlements in Natal. Indians had occupied properties there for four or five generations. He said: 'To some of us the land we possess to-day is a family heritage...'²⁸

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25. Only 3 of the 6 members of the Committee were present at this meeting. Sorabjee Rustomjee commented on the nonchalant attitude on the part of the members of the Committee during his discussions
26. D.C.C.'s Fourth Memorandum to the I.P.C., 22.4.1941, Notes taken at meeting of Special Committee re Housing held on Monday, 31st March, 1941, when Deputations from various Indian organisations were received, 2.
27. Ibid., 3.
28. Ibid., 5.

The representatives of the Indian organisations also complained that they were kept in ignorance of the Council's intentions in connection with the expropriation of Indian-owned properties. The proposals of the D.C.C. had become known only because of the enquiry of the Broome Commission.²⁹ J.W. Godfrey, one of the Indian representatives, also pointed out that particularly in Riverside, temples and mosques were involved which were sacred to the Indian community. Unlike in the European community, once the land had been consecrated, the Indian community would not deconsecrate it.³⁰

The Committee remained unmoved by the arguments and pleadings of the Indian representatives. After the deputations had gone the Committee resolved that no alteration in the decision taken was necessary³¹ and the Minister should be informed expeditiously of the D.C.C.'s decision. Accordingly the Town Clerk, Durban, informed the Secretary of the Interior of the interview with the Indian representatives.³² The Council denied that segregation was the principal motive. They stressed that 'far-sighted town planning' and 'future living conditions' of the different population groups were the salient premises for its expropriation scheme.³³

29. Ibid., 4 and 8.

30. Ibid., 9.

31. N.A., Vol. 85, File 643J/SJ/MW(1) (D.C.C., T.C.O.), Minutes of Special Committee re Housing, 31.3.1941.

32. D.C.C.'s Fourth Memorandum to the I.P.C., 22.4.1941, The Town Clerk, Durban - The Secretary for the Interior, 2.4.1941.

33. Ibid.

A dialectic survey of the proposed expropriations tells a different story. In the Riverside area 603 acres were involved. Whites possessed 278 acres and Indians 325 acres and the total expropriated lands were to be utilised for White housing.³⁴ Two distinct areas were involved: the north bank of the Umgeni River and a strip running north and south to the east of Durban North and facing the Indian Ocean. The N.I.C. declared that expropriation in this area was actuated by racial reasons.³⁵ No benefit accrued to the Indian community at all from the proposed housing scheme. It was the best locality occupied by Indians with marine views and fresh winds and it was a healthy area.³⁶ It was a well established area with good substantial houses in existence.³⁷ Further, the predominantly White Durban North area was 'not in any way...prejudicially affected by the Indian residents.'³⁸ Above all the N.I.C. maintained that the reports of the various heads of department of the D.C.C. indicated a 'flagrant and unjustified case of an attempt at segregation' by seeking to eliminate the Indian residents from the area.³⁹ The N.I.A. submitted that 12 845 acres of land were available in close proximity to Durban North which was predominantly European.⁴⁰ Similarly approximately 490 acres were obtainable at

34. See above, 126, f/n.4.

35. Memorandum from the N.I.C. in Support of its Protest, 10.5.1941, 5.

36. Indian Views, 9.5.1941, 1.

37. Memorandum of the N.I.A. submitted to the Secretary for Public Health, 22.12.1941, 9.

38. N.A., Vol. 85, File 643J/SJ/MW(2) (D.C.C., T.C.O.), E.W. Stanton and H.O. Penberthy - The Minister of the Interior, 13.6.1941, in Memorandum for Council-in-Committee, Expropriation of Land: Riverside and Umgeni North Areas, 29.10.1941, 2.

39. N.I.C., First Statement to the I.P.C., 2.4.1941, para. 27, 8; see also, I.P.C., Minutes of Evidence, Vol. 48, 3.4.1941, 1867.

40. Memorandum of N.I.A. submitted to the Secretary of Public Health, 22.12.1941, 9-10.

Virginia Estate. ⁴¹

In the Sydenham area 108 acres were involved: 60 acres belonged to Europeans; 48 acres were Indian-owned. The proposed allocation was in the ratio of 73 acres for Coloureds, 35 acres for Europeans and none for Indians. ⁴² Indians did not benefit from the scheme. It was a most desirable non-White occupied residential area because of its proximity to the city. ⁴³ It suited the hawkers and the semi-skilled artisan class who had established themselves in the area over a period of seventy years in the pursuit of their livelihoods. ⁴⁴ The thirty acres owned by Europeans were unoccupied and undeveloped. Contiguous to the Coloured sub-economic housing scheme were 22 acres belonging to Martha A. Sparks Estate with another 75 acres of unalienated land in the possession of the D.C.C. in close proximity. ⁴⁵ The expropriation of Indian-owned property in the Sydenham area was consequently unnecessary and uneconomical. ⁴⁶ Such expropriation would also have the effect of depriving Indians of substantial houses in the area. ⁴⁷

41. Memorandum from the N.I.C. in Support of its Protest, 10.5.1941, 2. The City and Water Engineer objected to acquiring Virginia Estates on the grounds that the average distance to the Durban City Hall was 12km (7,5 miles), whereas the Indian residents were much nearer to the centre of the City. N.A., Vol. 85, File 643J/SJ/MW(2) (D.C.C., T.C.O.), City and Water Engineer, Durban - The Town Clerk, Durban, 24.11.1941, 1.

42. See above, 126, f/n. 4.

43. City and Water Engineer, Durban - The Town Clerk, Durban, 24.11.1941, 1.

44. Memorandum of the N.I.A. submitted to the Secretary for Public Health, 22.12.1941, 10.

45. Ibid., 11.

46. Memorandum from the N.I.C. in Support of its Protest, 10.5.1941, 5.

47. In an interview with the author, Mrs Radhi Singh, a retired attorney, in Durban, 8.9.1983, states that her grandmother's house, among the largest in the area and situated on 6 acres of land, was affected by the expropriation scheme of the D.C.C. She maintains that there was more than enough vacant land in the area for Europeans and Coloureds without having to expropriate the Indians. She describes the expropriation scheme of the D.C.C. as 'nothing more than legal land grabbing' from the Indian community.

In Springfield Extension, of the 129 acres to be expropriated, 36 were European-owned and 93 in the possession of Indian residents, all of which were to be utilised for Indian housing. It is interesting to note that while European-owned land was going to be expropriated the whole area was regarded as a low-class residential one because of the sub-economic houses in the vicinity. Views were restricted because of the Umgeni Valley. The chief complaint was that the residents from Sydenham who were to be moved to this area would be required to travel farther than previously to and from the city-centre.⁴⁸

In the Merebank/Wentworth area 1 285 acres were involved: Whites 656 acres; Indians 629 acres. The allocation was to be 1 050 acres for Indians and 235 acres for Coloureds.⁴⁹ The principal objections to the D.C.C.'s scheme can be summarised as follows: The distance was 11,2km (7 miles) from the city-centre. With poor roads and lack of adequate transportation, this distance was a serious burden to commuters from the area. The ground was low-lying and insalubrious. Civic amenities were non-existent,⁵⁰ and with the record of the City Council as it was, would be a long time in coming. While on balance the Indian community was gaining in terms of acreage,⁵¹ the N.I.A. argued that there was no need to expropriate Indian-owned lands because of the considerable extent of undeveloped land in the area eminently suitable for the Council's purpose.⁵² The Durban Corporation possessed 3 000 acres; there

48. Indian Views, 9.5.1941, 1.

49. See above, 126, f/n. 4.

50. Indian Views, 9.5.1941, 1; see also, Chapter One, 43.

51. Memorandum from the N.I.C. in Support of its Protest, 10.5.1941, 3.

52. Memorandum of the N.I.A. submitted to the Secretary of Public Health, 22.12.1941, 3.

were 200 acres in the Jacobs Estate; Wood Estate, 450 acres; Bowers Estate 150 acres; the R.K.Khan Hospital and Dispensary Trust and Mr E.M.Paruk between them owned 500 acres.⁵³ The site and situation of these lands were ideally suited for Indian housing and presented no difficulties for the provision of civic amenities. Both the N.I.C. and the N.I.A. therefore regarded the Council's proposals as a deliberate attempt to dislodge Indians from their respective settled areas.

The Merebank/Wentworth housing proposal, in addition, was seen as an Indian Village Scheme⁵⁴ and to that extent the implementation of segregation in a subtle and oblique manner. The N.I.A. emphasised the fact that Section 11 of the Housing Act did not contemplate, in spirit or letter, the wholesale removal of a settled community from one area to another.⁵⁵

The objections of the Indian community to the D.C.C.'s scheme had the effect of delaying the Minister's assent to the various proposals. The Minister in the interim suggested a round table conference, to formulate a modus vivendi for the expropriation of land, between the City Council and Indian organisations.⁵⁶ Acting on this recommendation⁵⁷ and prompted by the fact that delay resulted in the escalation of costs, the Special Committee re Housing of the D.C.C.

53. Ibid., 13-14.

54. Ibid., 16.

55. Ibid., 17.

56. The Minister had met the Council-in-Committee in regard to the Lawrence Committee: see, Minutes of Council-of-Committee, Durban City Council, 31.7.1941, 2132 et seq.

57. N.A., Vol. 85, File 643 J/SJ/MW/(2) (D.C.C., T.C.O.), Memorandum for Works Committee, Housing Schemes: Umgeni North, Sparks Estate Extension, Springfield Extension and Merebank/Wentworth Areas, 28.10.1941.

convened a meeting of all parties opposing the Council's housing scheme, scheduled for 7 November 1941.⁵⁸ It is important to note that at a meeting of such gravity the Chairman allowed only one representative from each of the N.I.A. and N.I.C. to speak. Further, the spokesman was limited to ten minutes.⁵⁹

P.R.Pather referred to the Mayor's proposals regarding choice sites for Indian occupation in Riverside. These proposals had apparently been put to a meeting of the Lawrence Committee. Pather took the line of argument that the Indian representatives should be made au fait with the Mayor's intentions, otherwise it would be fruitless to continue the deliberations. The Chairman ruled that such a discussion was not relevant to the objectives for which the deputations had been invited. The N.I.A. as a result withdrew from further discussions.⁶⁰ As usual Kajee adopted a more conciliatory approach and offered the collaboration of the N.I.C.⁶¹ He argued that Riverside presented the thorniest problem because Indians were being removed to make way for Europeans. He suggested Riverside, and for similar reasons, Sydenham, should be omitted from the Council's plans and that the scheme at Merebank should be commenced with.

58. N.A., Vol. 85, File 643 J/SJ/MW(2) (D.C.C., T.C.O.), The Town Clerk, Durban - N.I.A., and N.I.C., 3.11.1941; see also, Minute and Agenda Book, N.I.C., 14.9.1941, Report of the Joint Secretaries of the N.I.C., 7.

59. I.A.P., Notes taken at Meeting of Special Committee re Housing held on Friday, 7th November, 1941, when Deputations from the Natal Indian Association and the Natal Indian Congress were received, 1. P.R.Pather for the N.I.A. objected to this restriction imposed by the Chairman.

60. Ibid., 2-3. See also, The Natal Daily News, 13.11.1941. The N.I.A. subsequently submitted a résumé of events leading to its withdrawal from the meeting. See, N.A., Vol. 85, File 643J/SJ/MW(2) (D.C.C., T.C.O.), N.I.A. - The Town Clerk, Durban, 12.11.1941.

61. Notes taken at Meeting of Special Committee re Housing, 7.11.1941, 4.

He also suggested that Indian-owned land should not be expropriated for European or Coloured housing; small-holdings should only be acquired for roads or public amenities; that two assessors, one nominated by the landowner and the other by the Durban Corporation, should determine current fair market value of property in cases where agreement could not be reached with the Estates Manager; European lands in Merebank/Wentworth adjacent to the Indian properties to be acquired for Indian housing; where road construction necessitated fencing of property on one side 15 per cent of the property should be given free, provided the rest of the property was not rendered useless; titles of drainage and sewerage to be given free to the Corporation, all expenses to be borne by the Corporation; the 'Slums Act' to be invoked to demolish buildings that could not be renovated.⁶² The Council considered the suggestions made by the Indian representatives as unviable for the monumental scheme contemplated.⁶³ A stalemate thus ensued.

62. Ibid., 5; see also, N.A., Vol. 85, File 643J/SJ/MW(2) (D.C.C., T.C.O.), Memorandum to Special Committee re Housing, 13.11.1941, 1.

63. Ibid., 2.

The stalemate was only resolved when the Central Housing Board decided to inspect the areas in question. It also proposed to confer with the D.C.C. and representatives of the Indian organisations which protested against the expropriation of Indian-owned lands by the Council.⁶⁴ The Board's peripatetic task was scheduled to commence in Durban on 26 January 1942 and terminate on 29 January 1942.⁶⁵ On the first day the Board⁶⁶ met Municipal officials in the morning for preliminary discussions. In the afternoon the Board inspected land at Riverside, Sydenham (Sparks Extension) and Springfield Extension, accompanied by Municipal officials and two representatives each of the N.I.A. and N.I.C. The following day inspections were made of Merebank/Wentworth and Springfield and Sydenham were revisited. The remaining two days were spent in consultations with Indian organisations and the Council's Special Committee re Housing.⁶⁷

64. N.A., Vol. 85, File 643J/SJ/MW(2) (D.C.C., T.C.O.), Secretary for Public Health - The Town Clerk, Durban, 24.12.1941.

65. N.A., Vol. 85, File 643J/SJ/MW(2) (D.C.C., T.C.O.), Secretary for Public Health - The Town Clerk, Durban, 13.1.1942.

66. The Members were Brig. Sir E.N. Thornton (Chairman), Messrs F.W. Jameson, Clelland and Savage.

67. N.A., Vol. 85, File 643J/SJ/MW(2) (D.C.C., T.C.O.), Acquisition of Land for Housing, Summary for File, 1.2.1942.

Kajee maintained that the Indian community did not oppose the removal of slum conditions in terms of the 'Slums Act'. He assured the Board that the N.I.C. 'was prepared and willing to assist in any manner possible in clearing up slums and improving the living conditions of the Indian Community where such action did not entail the taking away of Indian owned land.'⁶⁸ He was of the opinion that the intention of the Council to expropriate Indian-owned lands for use by other sections of the population was 'grossly unfair'. Referring specifically to Riverside, Kajee asserted that the Council appeared steadfastly determined to expel the Indians from the area and to make it wholly European.⁶⁹ On this issue Kajee informed the Board that there was to be no compromise on the part of the Indian community.⁷⁰

P.R.Pather for the N.I.A. echoed Indian reaction to the Council's schemes explicitly: 'The Indian community was suspicious of the City Council, and I am sorry to say that our Association feels that the Indians have every cause to attach ulterior motives to the Council's activities.'⁷¹ He cited the shabby treatment of the Indian members

68. N.A., Vol. 85, File 643J/SJ/MW(2) (D.C.C., T.C.O.), Notes taken at meeting of Central Housing Board, held in Committee Room No. 3, Municipal Buildings, Durban, on Wednesday, 28 January, 1942, when representatives of the Natal Indian Congress, Natal Indian Association and other Organisations were interviewed, 1.

69. Ibid., 3.

70. Ibid., 5.

71. Ibid., 6; see also, The Leader, 31.1.1942, 4, where A.I. Kajee expressed a similar sentiment:

'The Indian community, through its organisations, is inclined to think that the intentions of the city council are not motivated by any good intention, but that its heart is black and that in this scheme it has become more sinister and even darker than it has ever been before.'

of the Lawrence Committee by the Council.⁷² The D.C.C. had refused to take the Indian members into its confidence to discuss housing plans for Indians and this rebuff had engendered suspicion and mistrust in the minds of the Indian community.⁷³ Sorabjee Rustomjee expressed the opinion that the N.I.A. was not opposed to the expropriation of large areas. The Association was anxious about the owner of a small property holding and denounced the deprivation 'of his little block of land in which he had sunk his life-savings' as unjust.⁷⁴

A joint deputation of representatives of the Indo-European Council, the Durban Anglican Church Council and the Durban Christian Ministers' Association⁷⁵ was also interviewed by the Board. They expressed concern over the expropriation of Indian-owned property in Riverside for European residents. They pleaded that houses should be made available to Indians before they were removed because of slum conditions.⁷⁶

On 29 January 1942, the Board met with the Special Committee re Housing. At the commencement of the meeting, the Acting-Chairman, Councillor H.G.Capell, announced that the meeting was 'a private one, between the Board and the Council's Housing Committee' and asked the

72. See, Joshi, The Tyranny of Colour, 275.

73. N.A., Vol. 85, File 643J/SJ/MW(2) (D.C.C., T.C.O.), Notes taken at meeting of the Central Housing Board, Durban, 28.1.1942, 6; see also above, Chapter Two, 69.

74. Ibid., 10.

75. The Deputation comprised: Paul Sykes, Mrs P. Morel, Rev. W. H. Satchell, Rev. Canon Martin, Rev. C. Oberlin Harris and Rev. C. J. Lander. Ibid., 11.

76. Ibid., 12.

Indian representatives to leave the meeting.⁷⁷ This peremptory action on the part of the City Council must have been both humiliating and disquieting to the Indian organisations. They had no alternative but to withdraw. The Committee rejected the Indian claim that Riverside was the only area where choice sites could be reserved for Indian occupation because of the preponderance of tin shacks. The general consensus of Committee members was that any compromise with the Indian community in respect of Riverside 'would tend to spoil the whole scheme as planned by the Council.'⁷⁸

Sir E.N. Thornton, Chairman of the Board, reminded the Committee that the Indian community was unyielding in their protest against any expropriation of Indian-owned land. He advised that 'if the Council was fair and open minded in its negotiations he was sure the difficulties were capable of solution.'⁷⁹ The implication was that the Council would have to modify its plans and that compromise was inevitable. Insofar as the other areas were concerned the Board intimated that it had enough information for its purpose. The Board submitted its recommendations to the Minister on 3 February 1942.⁸⁰

77. N.A., Vol. 85, File 643J/SJ/MW(2) (D.C.C., T.C.O.), Minutes of Special Committee re Housing, 29.1.1942, 1.

78. Ibid., 3.

79. Ibid., 2.

80. N.A., Vol. 85, File 643J/SJ/MW(2) (D.C.C., T.C.O.), Central Housing Board - Secretary for Public Health, 3.2.1942; see also, Minutes of the Durban City Council, 10.7.1942, 1460-1463.

For Riverside the Board recommended the rejection of the Council's proposals. It suggested instead that 600 plots on the western end of the area between the Athlone and Connaught Bridges should be reserved and put up for public auction by the Council without any trammels on Indian ownership or purchase. The remainder of the area, comprising approximately 600 plots, was to be reallocated for European housing.⁸¹ The Board's recommendations, contrary to the Council's proposals, provided Indian residents with the opportunity of acquiring sites in a choice area with ocean views. The compromise appeared to be a reasonable solution of the problem in the Riverside area.⁸² It also recommended the expropriation of the Virginia Estate for future European expansion.

In the Merebank/Wentworth area the Board submitted that 'the acquisition by the Council of the whole area be authorised, on the understanding that individual Indian plot holders residing in the area should be allowed to reacquire their plots, if this can be arranged, having regard to the general layout of the scheme.'⁸³ For the Sydenham (Sparks Extension) scheme the Board advocated general approval of the Council's proposals for Coloured housing with the proviso that the area bounded by plots on both sides of Mayflower Road (south-west),

81. N.A., Vol. 85, File 643J/SJ/MW(2) (D.C.C., T.C.O.), Central Housing Board - Secretary for Public Health, 3.2.1943, 2.

82. Ibid., 2; see also, The Leader, 30.5.1942, 1.

83. Minutes of the Durban City Council, 10.7.1942, 1462.

St Theresa Road (north-west) and Garbutt Road (now Barns Road) (north-east) should be excluded. A further area to the north-west was to be earmarked for Coloureds. The Indian community assured the Board that if such a plan was adopted they would accept the scheme.⁸⁴ The Board proposed the ratification of the schemes mooted by the Council in regard to the Springfield Extension and Sydenham (European) areas. Finally, the Board concluded that the Minister should give his approbation to its recommendations 'subject to the condition that the Council will only resort to expropriation in those cases where the owners are not prepared to sell after every endeavour has been made to purchase at a fair market value.'⁸⁵

With only one exception which did not involve an Indian area, the D.C.C. accepted the proposals suggested by the Central Housing Board.⁸⁶ Understandably Indians remained implacable. The Indian Opinion in a pungent editorial assailed the entire scheme as 'an inherent prejudice against Indians living in the neighbourhood of Europeans' and concluded that what the Europeans failed 'to achieve through the Class Areas Bill years ago, is being surreptitiously achieved through the Town Planning

84. N.A., Vol. 85, File 643J/SJ/MW(2) (D.C.C., T.C.O.), Central Housing Board - Secretary for Public Health, 3.2.1942, 3.

85. Ibid., 3.

86. This involved the Coloured housing scheme and Sherwood Scheme for Europeans. The D.C.C.'s recommendation did not affect the Board's suggestion materially.
N.A., Vol. 85, File 643 J/SJ/MW(2) (D.C.C., T.C.O.), The Town Clerk, Durban - The Private Secretary, The Minister of the Interior, 15.7.1942; see also, The Natal Daily News, 15.6.1942 re Housing Committee's recommendation.

scheme.'⁸⁷ Mass meetings were again convened to protest against expropriation of Indian-owned lands. In Merebank the Durban Expropriation Joint Council of Action comprising various organisations not confined to the Indian community alone was formed.⁸⁸ Meetings were also held at Riverside,⁸⁹ 'Red Square', Durban,⁹⁰ and Sydenham.⁹¹

The Indian community made it quite evident that they suspected the D.C.C. of perfidy in that the Council was endeavouring to attain 'the right of expropriation...on the basis of a paper project which will not materialise.'⁹² Appeals were directed to the Minister of

87. Indian Opinion, Editorial, 12.6.1942, 170; see also, Letters to the Editor by N.Gopaul, P.Sykes and M.D Naidoo, Ibid., 172-173.

88. The Leader, 13.6.1942, 1; see also, Indian Views, 10.7.1942, 5. The Constituent organisations were:

1. Merebank Indian Ratepayers' Association.
2. South Coast Junction Indian Ratepayers' Association.
3. Durban Indo-European Joint Council.
4. Communist Party of South Africa, Durban Branch.
5. Non-European United Front.
6. Natal Indian Congress.
7. Nationalist Bloc of the Natal Indian Association.
8. Natal Indian Farmers' Union.
9. Riverside Muslim Society.

Letterhead of Durban Expropriation Joint Council of Action, see, N.A., Vol.85, File 643J/SJ/MW(2)(D.C.C., T.C.O.), Durban Expropriation Joint Council of Action - The Minister of the Interior, 22.8.1942.

89. Indian Views., 12.6.1942, 3.

90. Indian Opinion, 19.6.1942, 181.

91. The Leader., 13.6.1942, 1.

92. W.C.L., AD843/M/D(S.A.I.R.R.-R.J.Papers), Correspondence Housing (Expropriation of Indians at Riverside, Durban North), M.Webb - J.D. Rheinallt-Jones, 13.5.1942.

Public Health in the light of the 'alarming situation' as well as the 'unreasonableness of the proposals' 'and the deep resentment' of the Indian residents that he should withhold assent to the recommendations of the Central Housing Board.⁹³ Telegrams were even sent to prominent persons in India protesting against the expropriation of Indian-owned properties.⁹⁴

A survey of the sites to be expropriated in Riverside revealed another interesting fact which cast further doubt on the bona fides of the Council. The Indian-owned land was highly developed; the European sites comprised the quarry and other vacant land considered by the City Engineer as suitable only for parklands because of the nature of the topography.⁹⁵ The Leader also observed:

'Human hands have not yet developed the place for occupation. The land is not given to building. The division, then, is obviously to the detriment of the Indian.'⁹⁶

93. N.A., Vol. 85, File 643J/SJ/MW(2) (D.C.C., T.C.O.), Riverside-Briardene and District Indian Ratepayers' Association - The Minister of Public Health, 5.7.1942; see also, AD843/M/D (S.A.I.R.R.-R.J.Papers), Correspondence Housing, M. Webb - J.D. Rheinallt-Jones, 19.6.1942, Enclosures, Indo-European Council - The Rt. Hon. H.G. Lawrence, Minister of Public Health, 19.6.1942; Petition to Minister for Public Health by Joint Deputation of Durban Anglican Church Council and Durban Christian Ministers' Association, n.d.

94. Telegrams were sent by the Riverside-Briardene and District Indian Ratepayers' Association to: Mahatma Gandhi, Pandit Jawaharlal Nehru, the Indian National Congress Committee, the Viceroy of India, the Leader of the Opposition in the Indian Legislative Assembly and Maulana Abdul Kalam Azad (Religious Indian leader and staunch supporter of Gandhi). Indian Opinion, 17.7.1942, 211.

95. R. Ghoorun - Editor, Indian Opinion, 31.7.1942, 230.

96. The Leader, 1.8.1942, 4.

The Durban Expropriation Joint Council of Action declared that in the final analysis very few Europeans in the Riverside area were involved since the White population numbered less than 500. On the other hand an estimated 5 000 Indians were going to be dehousing. The ultimate result was one 'patently prejudicial' to the Indian community.⁹⁷ They also objected on a 'matter of principle' to the expropriation of Indian-owned lands in the other areas.

Subsequently the Joint Council of Action convened a Mass Meeting in the City Hall on the afternoon of 16 August 1942.⁹⁸ The Indians had gathered earlier at the 'Red Square', the parking lot between Pine Street and Commercial Road, from where they marched to the City Hall.⁹⁹ Women led the procession with the words 'Lay off our Homes.'¹⁰⁰ In addressing the meeting Mabel Palmer declared that 'Expropriation...was the latest attempt to stifle Indian expansion in South Africa.'¹⁰¹ But it was Senator Edgar H. Brookes who enunciated the chagrin of the Indian community over the apparent turpitude of the Council:

'The proposed expropriation scheme of the Durban City Council is of a sweeping character, involving many properties which are not slums and is carried out mainly on racial lines. In short, it is an effort to introduce segregation under the guise of slum-clearance. It is utterly repugnant to my conception of decency and fairplay.'¹⁰²

97. I.A.P., Durban Expropriation Joint Council of Action - The Minister of the Interior and Public Health, 15.7.1942, para. 14 and 16, 3; see also, Indian Views, 31.7.1942, 7; The Natal Mercury, 17.7.1942. For a further copy of the letter see: UNISA, Accession 105, 4.5.

98. N.A., Vol.85, File 643J/SJ/MW(2)(D.C.C., T.C.O.), Durban Expropriation Joint Council of Action - The Minister of the Interior and Public Health, 22.8.1942, 1; see also, The Natal Mercury, 17.8.1942. More than 4 000 people were present in the City Hall with some 3 000 who failed to gain admittance.

99. Indian Views, 21.8.1942, 2; see also, Indian Opinion, 21.8.1942, 261-262.

100. Indian Views, 21.8.1942, 2.

The procession and the City Hall meeting was 'proof of the silent and unequivocal protest of a suffering people,' ¹⁰³ against the prejudice of the Durban City Council. The meeting was of the opinion that the proposals of the Council as modified by the Central Housing Board would exacerbate rather than ameliorate the already acute housing problem.¹⁰⁴ The meeting also condemned the proposals as being designed to effect segregation.

Whites who were affected by the Central Housing Board's recommendations for Riverside, viz., those living in the Mount Argus area, protested against Indian occupation of the region.¹⁰⁵ The Minister offered a further suggestion to the City Council. He proposed that 350 choice sites with ocean frontage in Riverside and another 250 acres on the Bluff Marine Drive be reserved for Indians.¹⁰⁶ This was in lieu of the 600 sites at Riverside. But the N.I.A. remained adamant. P.R. Pather, one of the Joint Secretaries, maintained:

'We have taken up a stand at Riverside; no Indian land must be acquired and turned over for European occupation. We shall not compromise. There will be no concessions at Riverside.'¹⁰⁷

103. N.A., Vol. 85, File 643J/SJ/MW(2) (D.C.C., T.C.O.), Durban Expropriation Joint Council of Action - The Minister of the Interior and Public Health, 22.8.1942, 1.

104. Ibid., 2; see also, The Leader, 22.8.1942, 6.

105. Minutes of the Durban City Council, 4.9.1942, 1662.

106. The Natal Mercury, 31.8.1942.

107. The Leader, 5.9.1942, 1; see also, N.A., Vol. 85, File 643J/SJ/MW (2) (D.C.C., T.C.O.), N.I.A. - The Private Secretary, Minister of the Interior, 3.9.1942.

Ultimately the D.C.C. yielded. The opposition to the proposals regarding Riverside was now being launched not only by Indians but also by Europeans whose vested interests were affected. This changed the entire complexion of the scheme. Moreover the Minister's suggestion of making sites available at Marine Drive on the Bluff was quite unpalatable to the Council because it would upset its plan to segregate the Indians. At its meeting on 30 September 1942, the Council decided that:

- '(a) all resolutions adopted by the City Council regarding the acquisition of land in the Riverside (Umgeni North) areas be rescinded, and
- (b) that the City Medical Officer of Health be instructed to take the necessary immediate steps under the Public Health Act, the Slums Act, and the Housing Act, to clearup the Riverside, Umgeni North areas.' 108

A mass meeting held at Riverside on 5 October 1942¹⁰⁹ praised the N.I.A. for its role in opposing a 'flagrant violation of the rights of a community to live where it chooses.'¹¹⁰ But the fate of the other areas was unhappily different. The Minister gave his formal approval for the implementation of the Council's schemes as recommended by the Central Housing Board.¹¹¹ And if there was any exultation in Riverside it was short-lived. On 25 June 1943 the Finance Committee of the D.C.C. revived the expropriation incubus for the Indian residents of Riverside.

108. Minutes of the Durban City Council, 30.9.1942, 1734; see also, The Natal Daily News, 1.10.1942; Kondapi, Indians Overseas, 1838-1949, 259.

109. Indian Views, 9.10.1942, 5; see also, Indian Opinion, 9.10.1942, 325; Indian Opinion, 23.10.1942, 342.

110. The Leader, 10.10.1942, 4.

111. N.A., Vol. 85, File 643J/SJ/MW(3) (D.C.C., T.C.O.), Acting Secretary Central Housing Board - The Town Clerk, Durban, 19.12.1942; see also, Minutes of the Durban City Council, 22.1.1943, 180.

It rescinded the decision of 30 September 1942.¹¹² Further it recommended that the land between Connaught Bridge and the Athlone Bridge, excluding the Mount Argus area, be expropriated, replanned and sold by public auction without any restrictions to Indian ownership. The area between the Athlone Bridge and the sea was to be acquired and reserved for European housing. A time limit was to be imposed for purchase by Indians of an agreed percentage of the residential plots between the Connaught and Athlone Bridges. It was also recommended that the drawing of the necessary plans and formalities vis-a-vis the D.C.C. and the Central Housing Board, Administrator and Minister be initiated.¹¹³

The Indian residents of Riverside convened a protest meeting on 11 July 1943.¹¹⁴ The meeting expressed the disappointment endemic amongst the residents that with the exclusion of the Mount Argus area only Indian properties would be affected. Not only was such a decision contrary to the recommendations of the Central Housing Board, but it was clear that it was taken to appease White residents in the area who were opposed to the Indians being allowed to purchase property in

112. Minutes of the Durban City Council, 25.6.1942, 442.

113. Ibid., 442.

114. Indian Views, 16.7.1943, 3; see also, Statement on the alleged question of Indian penetration(N.I.C., 1943), para. 28, referring to the feeling of insecurity over the threatened expropriation of Indian properties at Riverside.

juxtaposition to Europeans. ¹¹⁵

On 16 July 1943 various organisations were invited to present their objections to the proposals of the Finance Committee before the Council-in-Committee. ¹¹⁶ The Indian organisations once more went through the usual motions of resolutions and protests reiterating the well-worn arguments used so often previously, but in vain. ¹¹⁷ However, the Council did not proceed with its scheme. ¹¹⁸ This was not because of any change of heart. The Council was concerned whether Section 11 of the Housing Act empowered it to carry out the recommendation of the

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115. N.A., Vol. 85, File 643J/SJ/MW(3) (D.C.C., T.C.O.), S.M. Pettersen - The Town Clerk, Durban, 16.6.1943, where a resolution of a meeting held by Burgesses from Ellis Park, Rose Hill, Mount Argus and Durban North was submitted opposing the proposal before the Council to expropriate all the land, both European and Indian-owned, with a view to reselling by public auction without anti-Asiatic clauses. The resolution further called upon the Council to acquire all property in non-European possession in the area and to dispose of the land subject to an anti-Asiatic clause to preserve the area as an entirely European one.
116. Minutes of the Durban City Council, 20.8.1943, 557. Deputations from the following bodies were received:
Riverside-Briardene and District Indian Ratepayers' Association; N.I.C.; Riverside Muslim Society; Anti-Segregation Committee; Communist Party of South Africa (Durban District); Representatives of Burgesses of Durban North, Ellis Park, Mount Argus and Rose Hill, including Mr Jack Lewis, M.P.C.; Natal Indian Farmers' Union; N.I.A. Minutes of Council-in-Committee, Durban City Council, 16.7.1943, 2206-2207.
117. See, N.A., Vol. 85, File 643J/SJ/MW(4) (D.C.C., T.C.O.), Riverside - Briardene and District Indian Ratepayers' Association - The Town Clerk, Durban, 20.7.1943;
I.A.P., Riverside Muslim (Moslem) Society - Council-in-Committee, 16.7.1943;
I.A.P., Communist Party of South Africa (Durban Branch) - Chairman, Council-in-Committee, 16.7.1943;
I.A.P., N.I.C., - Members of the City Council-in-Committee, 16.7.1943;
AD843/M/D (S.A.I.R.R. - R.J. Papers), Correspondence Housing, W.H. Satchell, Housing at Riverside, Durban, 1-2.
118. Indian Views, 6.8.1943, 7.

Central Housing Board, i.e., to expropriate land and to sell such land at a public auction.¹¹⁹

Legal opinion was unambiguous on this point.¹²⁰ In terms of Section 11 of the Housing Act the Corporation was empowered to acquire land for the purpose of carrying out an approved 'scheme' which was defined in Section 1 of the Housing Act to signify the construction of several approved dwellings. This meant that the Council had to use the expropriated land for such dwellings. Counsel opined therefore that 'the Corporation cannot competently acquire the land in question under the Housing Act for the purpose of re-planning it and then putting up for auction 600 sites free from restrictions.'¹²¹

The City Council thereupon sought the Minister's assistance 'to make it possible for the Council lawfully to give effect to the recommendations of the Central Housing Board.'¹²² A City Council deputation waited upon the Board which expressed its willingness to recommend a suitable amendment to Section 11(1) of the Housing Act to enable the Council to overcome its difficulty at Riverside,¹²³ and legitimise the expropriation of Indian-owned property. On 5 November 1943 the City Council approved of the amendment of Section 11(1) of the

119. N.A., Vol. 85, File 643J/SJ/MW(4) (D.C.C., T.C.O.), The Town Clerk, Durban - Messrs Shepstone and Wylie, City Solicitors, 22.7.1943, 1.

120. N.A., Vol. 85, File 643J/SJ/MW(4) (D.C.C., T.C.O.), Messrs Shepstone and Wylie, City Solicitors - The Town Clerk, Durban, 28.7.1943.

121. Ibid.

122. Minutes of the Durban City Council, 20.8.1943, 557; see also, N.A., Vol. 85, File 643J/SJ/MW(4) (D.C.C., T.C.O.), The Town Clerk, Durban - The Private Secretary to the Minister of Public Health, 24.8.1943, 2.

123. N.A., Vol. 85, File 643J/SJ/MW(4) (D.C.C., T.C.O.), Memorandum for General Purposes Committee, 16.10.1943, 1.

Housing Act as recommended by the Central Housing Board. ¹²⁴
Inter-alia, the amendment provided for the expropriation of land for
'replanning or laying out an area for resale to the public for building
 purposes..' ¹²⁵ This proposed amendment placed in the hands of the
 D.C.C. a gargantuan legal weapon. It was the source of extreme
 trepidation for the Indian community and became the subject of numerous
 memoranda and deputations of the Government.

The South African Indian Congress too contended that the architects
 of the Act had not contemplated investing local authorities with power
 to trade in lands. Moreover, the word 'scheme' as defined in the Act
 did not connote 'replanning or laying out of an area for resale to the
 public for building purposes' nor should such an interpretation be
 attributed to it. ¹²⁶ The amendment was considered as 'the most
 devastating weapon that can be given any to local authority to uproot a
 settled community at any time for any place.' ¹²⁷ It was asserted that
 the Central Housing Board had probably failed to take due cognizance of
 the serious consequences and repercussions of the sinister proposal. ¹²⁸
 The fears and misgivings of the Indian community were increased further

124. Minutes of the Durban City Council, 10.3.1944, 322; see also, W.C.L., A410/B.2.7(File 1) (Ballinger Papers), Extract from Durban City Council Minutes on the question of proposed amendments to Section 11 of the Housing Act No.35/1920 for Powers of Expropriation, 1 et seq.

125. Minutes of the Durban City Council, 10.3.1944, 322.

126. I.A.P., S.A.I.C., Memorandum on the Subject of the Proposed Amendment to Section 11 of the Housing Act for Powers of Expropriation, 23.3.1944, para. 4, 1. For further copies of the memorandum see, T.A.,C.I.A. 40,File No.897,Vol.1(Commissioner of Immigration and Asiatic Affairs Papers); T.A.,A1,Vol.161,No.21 (Smuts Archives, Public Papers); A410/B.2.7(File 1) (Ballinger Papers); I.A.P. (Minute and Agenda Book, S.A.I.C., Annual Conference, Seventeenth Session, 8-10.2.1946); UNISA, Accession 105, 6.1.6.

127. S.A.I.C., Memorandum on the Subject of the Proposed Amendment to Section 11 of the Housing Act, 23.3.1944, para. 5, 2.

128. A410/B.2.7(File 1) (Ballinger Papers), Telegram: Riverside and Briardene District Indian Ratepayers' Association, ...

when at a press conference on 1 May 1944 G.Heaton-Nicholls, Administrator of Natal, spoke of his deliberations with the Minister of Welfare and Demobilisation and others.¹²⁹ He referred, inter alia, to radial racial zoning in all Natal towns in terms of the recommendations of the Natal Post-War Reconstruction Commission. The proposed amendments to Section 11 of the Housing Act were thus seen as the vehicle by which prejudiced local authorities could 'achieve the sinister object of racial segregation.'¹³⁰

With the débâcle of the Pretoria Agreement¹³¹ the Government was constrained to introduce legislation where the Provincial Council had failed.¹³² This legislation took the form of the Housing (Emergency Powers) Act. It was an interim measure with manifold objectives connected with housing on a national scale.¹³³ The legislation was hurriedly passed towards the end of the session of Parliament. It provided the Government during an emergency period of three years with almost unlimited powers to control labour, expropriation of land for building purposes, and so on.¹³⁴

129. Minute and Agenda Book, S.A.I.C., 8-10.2.1946, N.I.C. Memo on the Subject of the Proposed Amendment to Section 11 of the Housing Act for Powers of Expropriation to the Minister of Welfare and Demobilisation, 25.5.1944, para. 5, 1. For a further copy of the memorandum see, A1, Vol.161, No.21 (Smuts Archives, Public Papers), Enclosure; UNISA, Accession 105, 6.1.6.

130. N.I.C. Memo on the Subject of the Proposed Amendment to Section 11 of the Housing Act, 25.5.1944, para. 6(c), 2.

131. See below, Chapter Six, 244.

132. Minute and Agenda Book, S.A.I.C., 8-10.2.1946, Notes on Interview with the Acting Prime Minister and the Ministers of the Interior and Social Welfare at Capetown on 2.4.1945, 2; see also, UNISA, Accession 105, 6.1.6.

133. A1, Vol.162, Nos.36/37 (Smuts Archives, Public Papers), K.A. Clark, Private Secretary to the Prime Minister -N.I.C., 8.6.1945. For a further copy of this letter see, Minute and Agenda Book, S.A.I.C., 8-10.2.1946.

134. A1, Vol.162, No.54 (Smuts Archives, Public Papers), H.G. Lawrence - Prime Minister, 17.7.1945.

In terms of this legislation, Provincial Councils and local authorities in Natal still had to obtain Ministerial approval for the expropriation of land. This proviso was welcomed by the N.I.C.¹³⁵ as was the omission of the powers to expropriate land for replanning, relaying out and resale of property for building purposes,¹³⁶ suggested by the Central Housing Board. The D.C.C. was now forestalled in its plans for Riverside. The Asiatic Land Tenure and Indian Representation Act of 1946¹³⁷ further froze the attempt of the Council to remove Indian residents from there. But the sword of Damocles hung precariously over the heads of the residents.

It finally fell when the Group Area Act was passed in 1950. The Durban North Ratepayers' Association pressurised their city councillors to make representations to the City Council and the Group Areas Board to remove the Indians from Riverside.¹³⁸ Eventually Riverside was declared a White group area. The struggle with the City Council ceased and a new one with the Group Areas Board commenced, but to no avail. Indians were compelled by legislation to vacate their long established settlement north of the Umgeni River.

135. Indian Views, 8.6.1945, 3.

136. Minute and Agenda Book, S.A.I.C., 8-10.2.1946, Memorandum of the Natal Indian Congress on the Subject of the Housing (Emergency Powers) Bill, 30.5.1945, para. 3,3. For a further copy of the memorandum see, UNISA, Accession 105, 6.1.6.

137. See below, Chapter Seven.

138. L. Kuper et al., Durban: A Study in Racial Ecology, 179, f/n.1.

It is interesting to note, as Paul Maylam states: 'Durban was a pioneer in the establishment of urban segregation in South Africa.'¹³⁹ Its attempt to control African urbanization along segregatory lines soon became a model for other local authorities and for the Government culminating in the promulgation of the Group Areas Act. Perhaps it would not be incorrect to conclude that the effort made by the D.C.C. to segregate the various groups in Durban under the guise of expropriation and housing schemes was given the force of law by the Nationalist Government as the Group Areas Act for racial segregation throughout the entire country.

The N.I.C. and the N.I.A. both worked hard to prevent the expropriation of Indian-owned property by the D.C.C. They made representations to the Government as well as to the local authorities. The community followed the lead given by the two organisations. For a little while, the differences of opinion among the leaders were forgotten as they battled against the more serious threat of expropriation. It is unfortunate that such effort had to be duplicated. Both the organisations could well have pooled their resources. Nonetheless whatever success was achieved in preventing the designs of the D.C.C. from materialising was largely due to the N.I.A. and the N.I.C.

139. P. Maylam, 'Aspects of African Urbanization in the Durban Area before 1940', in Natal in the Union, 1931-1961: A Collection of Papers on Development in Natal, presented at a Workshop at the University of Natal, October 29-30, 1980. (Pietermaritzburg, University of Natal, Department of Historical and Political Studies, 1981), 6.

The protest of the Indian community was not that they could see no good in the housing scheme proposed by the D.C.C., but that it was 'a cry against the failure of the City Council to fulfil its promises to the Indian people made years ago;...a cry against the sustained policy of the City Council to discriminate on racial grounds.' ¹⁴⁰ In Sydenham, Riverside, Springfield and Merebank/Wentworth Indians had settled and developed the lands over several generations, in some instances even before Europeans came to the area. The Indian residents did not deprecate town-planning as was repeatedly pointed out by the N.I.C. and N.I.A. in their memoranda. They were opposed to the uprooting of settled residents when the Council had adequate undeveloped and unalienated lands for its housing schemes.

The action of the Council was seen as blatant discrimination. For example, in Riverside, the Council rescinded its decision to expropriate when Whites objected to having their lands included for Indian occupation. Subsequently the White area, viz., Mount Argus, was excluded from the Council's scheme and the decision to have Indian-owned properties in Riverside expropriated reaffirmed. Senator Edgar H. Brookes commented aptly in this regard:

'Expropriation is a very drastic thing, and should be used only in the last extremity. So long as our law is based on the private ownership of property, it is not right that the individual should be made to feel insecure in his legal rights because he belongs to a particular race.

I suggest that the whole scheme, however well-intentioned, is unjust, and will not be of material and lasting benefit to Durban.' ¹⁴¹

140. The Leader, Editorial, 20.6.1942,4; see also, Swami B. Dayal (Sannyasi), Indians in South Africa, Memorandum to Government of India (Delhi, Hindustan Times Press, Reprint from Hindustan Times. 22.1.1936).

In spite of the phalanx of Indian opposition the Durban City Council had its way after all. What it had failed to effect covertly it achieved ultimately overtly through legislation.¹⁴² As the expropriation saga drew to its climax the mainstream of Indian political activity had to be diverted to something that proved more ominous. The Second Broome Commission had presented its report and the Trading and Occupation of Land(Transvaal and Natal) Restriction Bill was introduced in Parliament.

142. See, The Durban Housing Survey, (1952), 284, for a brief comment on the Council's intentions.

CHAPTER FIVE
SURRENDER TO THE SHIBBOLETHS OF PREJUDICE -
THE 'PEGGING ACT'

White attitudes towards Indian acquisition of land in the Durban area were becoming increasingly hidebound. This was clearly manifested in the spate of representations made to the Government to introduce legislation even before the Second Broome Commission had presented its Report.¹ The fractious Dominion Party considered Government initiatives 'inept and inefficient' to curb 'monotonous encroachment and penetration.'² The Natal Municipal Association demanded 'immediate Ministerial action to prevent exploitation of land by Indians which is openly taking place on a large scale in anticipation of possible preventive measures following the Broome Report.'³

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1. See, The Natal Daily News, 26.2.1943, where Natal United Party M.P.'s saw H.G.Lawrence, the Minister of the Interior, in this connection; also, The Natal Mercury, 3.3.1943, when a deputation of Natal United Party M.P.'s urged the Prime Minister to peg 'Asiatic Penetration' pending the presentation of Mr Justice Broome's Report; and Indian Views, 5.3.1943, 9.
 2. The Natal Daily News, 12.3.1943.
 3. N.A., Vol.37, File 174(12) (D.C.C., T.C.O.), Telegram: N.M.A. -The Minister of the Interior, 19.3.1943, in N.M.A., Indian Penetration Legislation, Secretarial Circular, 30.4.1943, 1; for a further copy of the circular see, N.A., Vol.71, File 527(10) (D.C.C., T.C.O.).

The demands from Natal for legislation against 'Indian penetration' were increasing.⁴ As there was an election in the offing the obstreperous White electorate in Natal had to be appeased and the tension that had been mounting within the coalition government had to be relieved. The Government had formerly decided not 'to proceed with Indian legislation while war conditions continue to exist.'⁵ This resolve gave way to the Minister of the Interior's warning that he would introduce legislation to peg the situation if the facts warranted such action.⁶

No sooner had the Minister sounded the warning of an imminent 'Pegging Bill' than deputations from the N.I.C. and the N.I.A. proceeded to Cape Town to lodge objections and protests against the proposed legislation.⁷ While the organisations were in Cape Town a Joint Consultative Committee was formed between the N.I.C. and the N.I.A. at

4. D.W.Krüger, South African Parties and Policies 1910-1960. A Select Source Book (Cape Town, Human and Rousseau, 1960),xiv.

5. J. Lawrence, Harry Lawrence, 149; see also, White, 'The Evolution of Policy, 1943-1948', 14, f/n.39.

6. The Leader, 27.3.1943,2; see also above, Chapter Three, 123, f/n.191.

7. Indian Views, 2.4.1943,3.

The N.I.C. deputation comprised: V.Lawrence, Mahomed Ebrahim, G.H.A.Kathrada, A.I.Kajee, W.S.Seethal, M.A.H.Moosa, V.K.Pillay, S.M.Paruk, Hans Maghrajh, A.M.Moola, A.J.Koobair, Abdoola Moosa, C.M.Anglia, M.A.Moola, M.K.Desai, G.H.A.Kadwa.

Statement on the alleged question of Indian penetration (N.I.C., 1943).

The N.I.A.deputation comprised: A.M.M.Lokhat, P.R.Pather, J.W.Godfrey, T.N.Bhoola, S.A.Abdulla, H.Kissoo, Sorabjee Rustomjee, A.S.Kajee, S.R.Naidoo, M.E.G.Paruk, E.I.Haffejee, M.S.Mall, P.Choudree, Mrs G.P.Godfrey. Dr Leonard Christopher was co-opted at Cape Town.

I.A.P., Report of the Deputation of the N.I.A., which was in Capetown in connection with the "Pegging Act", 8.5.1943, 1; see also, A Refutation of the European Agitation against "Indian Penetration" (N.I.A,1943), 12.

NATAL INDIAN ASSOCIATION DEPUTATION

which interviewed the Minister of the Interior (The Hon. H. G. LAWRENCE) in Cape Town on 9th April, 1943
on allegation of "Indian Penetration".

Photo taken with the High Commissioner for India.



Sitting (left to right): MR. S. R. NAIDOO, ADVOCATE J. W. GODFREY, MR. A. M. M. LOKHAT, SIR SHAFAT AHMAD KHAN (High Commissioner for India), MRS. G. P. GODFREY, MR. SORABJEE RUSTOMJEE, MR. P. R. PATHER.

Standing (left to right): MR. T. N. BHOOLA, MR. SHAIKH ABDULLA, MR. M. E. G. PARUK, MR. H. KISSOON, MR. E. I. HAFEEJEE, MR. A. S. KAJEE, MR. P. CHOUDREE, MR. M. S. MALL.

Inset: DR. LEONARD G. CHRISTOPHER

the behest of the High Commissioner for India.⁸ The Consultative Committee was to liaise with him. The High Commissioner gave the N.I.C. de facto recognition while the N.I.A. remained the official organisation recognised by the Government of India. At the initial meeting of the Consultative Committee it was unanimously decided 'that the only basis of any negotiation with the Union Government in regard to the impending legislation was "no legislation and no compromise".'⁹

The Government had wasted little time. The Broome Commission Report was released on 6 April 1943. The Government gave notice of motion for the Trading and Occupation of Land (Transvaal and Natal) Restriction Bill on 7 April 1943. The High Commissioner for India accordingly advised the Consultative Committee that the Union Government was determined to introduce legislation despite representations made by his Government.¹⁰ He also indicated that the Consultative Committee could be dissolved and the N.I.C. and N.I.A. then made separate representations to the Minister.

Both organisations presented 'carefully reasoned' statements. The N.I.C. contended that the situation in Durban did not require legislation¹¹ because 'the fears of Durban Europeans are unfounded and that the Durban Corporation has magnified the situation out of all proportion.'¹² The N.I.C. expostulated with the Minister of the

8. Report of the Deputation of the N.I.A., 8.5.1943, 2.

9. Ibid., 3.

10. Ibid., 4.

11. Statement on the alleged question of Indian Penetration (N.I.C., 1943), para. 32.

12. Ibid., para. 35.

Interior about the failure of the Durban City Council and European opinion to evaluate the whole gamut of Indian expansion and housing 'in a spirit of understanding, reason or sanity.' ¹³

The N.I.A. deputation left Durban on 28 March 1943. ¹⁴ At a Committee meeting on the same day prior to the departure of the deputation to Cape Town, the N.I.A. resolved that the aspirations and housing needs of the Indian community were ignored by those alleging 'Indian penetration' into predominantly European areas. It also accused the D.C.C. of sabotaging the Lawrence Committee and of callous neglect to provide sites and amenities for the Indian community. ¹⁵ The Committee also resolved that if the 'Pegging Bill' was introduced the N.I.A. should make representations to the Indian Government to recall the High Commissioner for India in South Africa, 'as a mark of protest as the Indian community will view the Pegging Bill as an insult and a slur to the Indian nation...' ¹⁶ Ashwin Choudree declared: 'In the eyes of the world South Africa must be judged, not by what it professes but by what it metes out to a disenfranchised section of its people[sic].' ¹⁷ The N.I.A. statement submitted to the Minister of the Interior particularised

13. Ibid., para. 35.

14. Report of the Deputation of the N.I.A., 8.5.1943, 1.

Note: Indian Opinion, 2.4.1943, 81, gives the date of departure as 21.3.1943. This is obviously a misprint, as the Minister's warning about the proposed legislation was only made on 22.3.1943.

15. Indian Opinion, 2.4.1943, 81; see also, A Refutation of the European Agitation against "Indian Penetration" (N.I.A., 1943), 6-7 and 3-4.

16. Indian Opinion, 2.4.1943, 81.

17. Ibid., 81.

the Indian grievances. The N.I.A. by facts and figures and other supporting evidence attempted to confute White allegations of 'Indian penetration'.

In Durban, in the meanwhile, the N.I.C. convened a mass meeting of Indians on Tuesday, 7 April 1943 at the Avalon Theatre,¹⁸ to protest against the proposed legislation. The Chairman of the meeting underscored the general feeling that the precipitate rush to introduce the Bill in Parliament was in fact being done 'with an eye on the forthcoming elections and that the Government desires only to appease a few vociferous European voters and is not concerned with the feelings of the thousands of Indians who cannot affect the elections one way or another.'¹⁹

In introducing the Bill, H.G. Lawrence, the Minister of the Interior, appealed for the discussion of the 'Indian penetration' question on a 'non-political, non-party basis' reminding the House that they were dealing not with 'trifling matters' but with the Indian community in South Africa with obvious repercussions 'on a great Dominion in the East.'²⁰ But in spite of such sentiment as well as the

18. Indian Views, 10.4.1943, 5.

19. Ibid., 5; see also, A410/C.2.2(Ballinger Papers), N.I.C., Presidential Speech of Mr M.A.Motala delivered at Mass Meeting, 13.4.1943, 2, where a similar comment was made.

20. Hansard, Debates of the House of Assembly, Vol.46, 29.3.1943, Col. 4282.

adjuration of the Indian Government ²¹ and the plea of the Indian community in South Africa, on 10 April 1943 the Trading and Occupation of Land (Transvaal and Natal) Restriction Bill was brought up and read a first time, ²² with the Second Reading set down for 14 April 1943.

On the eve of the Second Reading of the 'Pegging Bill' the N.I.C. again held a mass meeting in protest against the Bill. ²³ Mrs V.M.L. Ballinger, Africans' Representative in the House of Assembly, presented a petition from the N.I.C. and the Transvaal Indian Congress praying for leave to be heard at the Bar of the House in opposition to the Bill. ²⁴ However, the Parliamentary ideals of tolerance and fairplay were sloughed off. The petition of the N.I.C. 'was not so much refused as ignored by the Government.' ²⁵ The poignancy of these entreaties had absolutely no effect on the passage of the Bill through the House of Assembly.

21. The African World, 17.4.1943, 39, where the Government of India issued a communique on 8.4.1943 expressing regret at the extension of the Transvaal legislation to Natal. Former Agents-General, Sir Maharaj Singh, Sir Raza Ali and Mr V.S.S.Sastri also cabled Smuts to drop the anti-Indian Restriction Bill:

'While appreciating your Parliamentary difficulties, we are bound to say the Bill, if passed, would shatter the faith of those Indians who still favour India remaining in the British Commonwealth.

As South Africa's friends, we earnestly suggest a conference after the war, without prejudicing the issue by passing the present Bill,....'

The Natal Daily News, 13.4.1943; see also, Pachai, The South African Indian Question, 168.

22. Hansard, Debates of the House of Assembly, Vol.46, 10.4.1943, Col. 5142.

23. The Leader, 17.4.1943. 5; see also, The Natal Mercury, 14.4.1943.

24. Hansard, Debates of the House of Assembly, Vol.46, 13.4.1943, Col. 5293; see also, The Natal Daily News, 13.4.1943.

25. A410/B.2.7 (File 1) (Ballinger Papers), Statement by M.Ballinger, 'Restrictive Legislation Against Indians: Mr Hofmeyr Explains His Attitude: African's Representatives Oppose: Government Uncomfortable but Unrepentant...', (n.d.), 2.

Lawrence claimed that the decision to restrict the acquisition of property by Europeans and Indians was taken after 'the most careful and exhaustive examination of all the facts,...' ²⁶ He referred to the efforts of the Lawrence Committee. He conceded that the Indian representatives had 'made an honest, genuine and statesmanlike effort to assist the Government in dealing with this matter along non-statutory lines.' ²⁷ In December 1941 the Lawrence Committee ceased to function; it was resuscitated in May 1942. ²⁸ But the endeavours of the Lawrence Committee proved abortive because of the reluctance of the Durban City Council to allow its representatives to sit on the Committee. ²⁹

He reiterated the Broome Commission's conclusion that the cause of 'penetration' was the acquisition of property by Indians because of investment and speculation rather than house-hunger. ³⁰ He refuted the Indian claim that the Bill was one of segregation and therefore a violation of the Cape Town Agreement. He considered the legislation as an interim and temporary measure providing for a standstill of three years. ³¹

26. Hansard, Debates of the House of Assembly, Vol.46, 14.4.1943, Col.5381.

27. Ibid., Col.5383.

28. Ibid., Cols.5383-5385; see also above, Chapter Two, 73.

29. Hansard, Debates of the House of Assembly, Vol.46, 14.4.1943, Col.5385; see also, Hansard, Debates of the Senate, 22.4.1943, Col.2050.

30. Hansard, Debates of the House of Assembly, Vol.46, 14.4.1943, Col.5387.

31. Ibid., Col.5388.

In the course of his speech the Minister indicated that allegations had been made in regard to inadequate housing and other civic amenities. A strong prima facie case had been made out in regard to that allegation.³² Since the Government did not have the requisite facts no decision could be arrived at on that question. Consequently the Government intended to appoint a Judicial Commission to enquire into and report on matters affecting the Indian community in Natal with special reference to housing, health needs, civic amenities, as well as adequate residential and educational facilities.³³ The Minister affirmed that as the Bill was to apply to Durban in particular 'the Durban City Council must understand that it will be on its trial.'³⁴

Dr D.F. Malan, the Leader of the Opposition, supported the legislation wholeheartedly. But he proposed an amendment calling for the Bill to be referred to a Select Committee; and the restrictions applicable to the Transvaal in terms of the Asiatic (Transvaal Land and Trading) Act of 1939 be made applicable to Natal. He perceived the Bill as being discriminatory towards Durban and argued for its general application throughout Natal.³⁵ Dr Malan added:

'No section, in South Africa,...had been more firm on the colour question than the English-speaking community in Natal and he was glad that they were remaining true to that attitude.'³⁶

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32. Calpin, Indians in South Africa, 172; see also, Hansard, Debates of the Senate, 22.4.1943, Cols.2050-2051; A.I.Kajee et al., Treatment of Indians in South Africa, 30.
33. The Natal Daily News, 14.4.1943; see also, Hansard, Debates of the Senate, 22.4.1943, Cols.2050-2051.
34. Hansard, Debates of the House of Assembly, Vol.46, 14.4.1943, Col.5391.
35. Ibid., Col.5426.
36. The Leader, 17.4.1943, 5; see also, Calpin, Indians in South Africa, 175.

The Prime Minister, General J.C. Smuts, rejected the amendment proposed by Dr Malan as a dilatory motion. While regretting the affront to India, he considered the Bill necessary. He alleged that Indians had brought the legislation upon themselves :

'They have forced our hand, and we are today faced with this position that in Durban, which is a European city and which we are determined to maintain a European city,...we are faced in Durban today with large-scale penetration.' 37

He later qualified this statement when the N.I.A. deputation met him on 21 April 1943. They pointed out that the Indian population of Durban comprised 90 000 out of a total of 200 000. Durban could never be a White city. Smuts replied that 'his reference to Durban being made a white city referred to the European areas acknowledged to be as such.'³⁸ Mrs Ballinger also remonstrated with Smuts for his comment which was as contradictory as it was eccentric that Durban was a European city. She reminded him that it was 'a South African city, and that like all South African cities, its wealth and development had been built up by the combined efforts of a number of racial groups...' 39

37. Hansard, Debates of the House of Assembly, Vol.46, 14.4.1943, Col.5438.

38. Report of the Deputation of the N.I.A., 8.5.1943, 8.

39. The Forum, Editorial, (24.4.1943),(6),(4), 3; see also, Palmer, Natal's Indian Problem, 22; The Leader, 17.4.1943, 5; Indian Views, 23.4.1943, 7.

Smuts reiterated that he wished to maintain friendly relations with India. For this reason there was to be a temporary pegging of the situation in Durban. At the same time he conceded that in its attitude to the Indian community it was obligatory for the Government to 'be fair and just to them, and see that both in regard to land holding, housing schemes, amenities and all the rights which civilised people are entitled to, are also afforded to them,...' ⁴⁰

Pachai considered Smuts's contribution to the debate as 'a most generous and statesman-like evaluation of the position.' ⁴¹ In reality his speech was the epitome of sophistry for there was no translation of Smuts's apparent concern for the Indian community into action. Further his speech could hardly have been 'generous' and 'statesman-like' if one considers his rebuke of the Indian community:

'A minority of Indians had no regard for the interests of the country or of the Indians themselves...instead of putting their wealth into war loans they had used it to undermine the European position...' ⁴²

40. Hansard, Debates of the House of Assembly, Vol.46, 14.4.1943, Col.5442; see also, P.S.Aiyar, Conflict of Races in South Africa (Durban, African Chronicle Printing Works, n.d.), 238-239.

41. Pachai, The South African Indian Question, 169.

42. Indian Views, Editorial, 23.4.1943, 1; see also, 'The Indian Penetration Bill', The South African Outlook, (1.5.1943), (73), 65. Smuts wrote in similar terms to M.C.Gillett: Referring to the Legislation and the resulting protestations in South Africa and abroad he stated, '...all because some utterly selfish wealthy Indians choose to spend their ill-gotten gains, not by investing in war funds, but in buying up the properties of whites and thus raising the fears of the whites for the future of European civilization in South Africa.' J.van der Poel(Ed.), Selections from the Smuts Papers, Vol.V1, 426; see comment by Bombay Sentinel as quoted by Calpin, Indians in South Africa, 179; see also, Indian Views, 23.4.1943, 7.

Such comment was callous and unnecessary. Moreover, the attitude towards Indians deteriorated culminating in the temporary pegging measure becoming a permanent legislation in the form of the Asiatic Land Tenure and Indian Representation Act in 1946.

Mrs Ballinger, during the course of her speech expressed the hope that the Prime Minister would see the Bill as being most undemocratic in its scope.⁴³ She condemned the Bill as being 'unjustified' and 'unwise' and 'an appeal to racial prejudice'.

Colonel C.F. Stallard, leader of the Dominion Party, suggested that the provisions of the Bill should be extended to areas outside Durban.⁴⁴ He also criticised the interference by the Government of India in the domestic policy of South Africa. His speech was characteristic of the jingo-imperialist Dominion Party⁴⁵ making a patently artificial attempt to maintain its ideological rigidity by harrying the Indian community and attributing to it a pariah status in the wider context of the South African community. No doubt Stallard evinced a curious amalgam of a lack of sophistication and realism.

While there appeared general unanimity on the Bill between Government and Opposition, its passage through the House of Assembly was not without some travail for Smuts. On the day that the Second Broome Commission Report was made public, two Cabinet meetings were held: one in the morning and one in the evening.⁴⁶ A further meeting was scheduled for the following day. Rumour had it that there was a serious Cabinet crisis for it was unusual to have Cabinet meetings at such times during Parliamentary sessions. The rumour was true. The central and overriding issue involved the attitudes towards the Indian question.

43. Hansard, Debates of the House of Assembly, Vol.46, 14.4.1943, Col.5462.

44. Indian Views, 23.4.1943, 5; see also, Aiyar, Conflict of Races in South Africa, 238.

45. Ibid., 238.

46. The Natal Mercury, 7.4.1943.

On the one hand, Stallard, in consonance with Dominion Party prejudice obtusely implied that 'the provisions of the Bill were the minimum acceptable to his party.'⁴⁷ On the other hand it became known that J.H. Hofmeyr, Minister of Finance, was 'at variance with his colleagues on the desirability of legislation.'⁴⁸ He had previously disagreed with the United Party caucus in 1939 in connection with the Asiatics (Transvaal Land and Trading) Act.⁴⁹ Hofmeyr objected to the proposal to extend the 1939 Act. He submitted a letter of resignation to Smuts in which he declared:

'Personally I am unable to support that proposal, and cannot therefore as a member of the cabinet accept responsibility for it.'⁵⁰

Smuts appealed to Hofmeyr to withdraw his resignation, which Hofmeyr did. But he made it quite plain that he would exercise 'his freedom of action' during the Second Reading of the 'Pegging Bill' to state that he did not accept responsibility for the proposal. Smuts in reply indicated that an 'unhappy impression' would be created during a time of 'grave national emergency', and suggested that Hofmeyr should consider whether his difference of opinion with his colleagues would not be forcefully expressed by 'maintaining a discreet silence in the house and abstaining from its proceedings on the Asiatic bill.'⁵¹

47. The Natal Mercury, 15.4.1943.

48. The Natal Daily News, 7.4.1943.

49. A.Paton, Hofmeyr, (Cape Town, Oxford University Press, Abridged Edition, 1971), 239-240; see also, White, 'The Evolution of Policy, 1943-1948', 28, f/n. 36.

50. J.van der Poel(Ed.), Selections from the Smuts Papers, Vol.V1, 422; see also, A1/Aa(Hofmeyr Papers, General Correspondence:1940-1945), Hofmeyr-Smuts, 7.4.1943.

51. J.van der Poel(Ed.), Selections from the Smuts Papers, Vol.V1, 423.

Hofmeyr construed Smuts's suggestion as quite impracticable. He explained that there was already some misconception that he was opposed to the Bill as a whole. He would be required to justify his disagreement with his colleagues to his constituents at some stage. He concluded that: 'It seems best that I should make such a statement before it is dragged out of me, and there is no place where I can more appropriately do so than in the house during the discussion of the bill.'⁵² Hofmeyr's declaration in regard to his standpoint was keenly anticipated but when it came it was very disappointing.⁵³ As Hancock pithily comments: 'Hofmeyr was straining at the Witwatersrand gnat; but he swallowed the Durban camel.'⁵⁴

Hofmeyr made it abundantly clear in the course of his speech during the Second Reading of the 'Pegging Bill' that he had tendered his resignation to the Prime Minister because of his 'disagreement with the rest of the Cabinet...on the comparatively minor issue of the need to extend the period of the Transvaal Asiatics Land and Trading Act.'⁵⁵ He was satisfied that in Natal a perilous situation was developing which had to be checked because of serious racial complications. Insofar as Durban was concerned 'the proposals were fair and reasonable, and not discriminatory.'⁵⁶

52. Ibid., 423; see also, A1/Aa(Hofmeyr Papers), Hofmeyr-Smuts, 8.4.1943.

53. A410/B.2.7 (File 1) (Ballinger Papers), Statement by M. Ballinger, 'Restrictive Legislation against Indians:...', 1.

54. Hancock, Smuts: The Fields of Force: 1919-1950, 460.

55. The Natal Mercury, Editorial, 15.4.1943.

56. Ibid.

This apparently antithetical declaration that the legislation was unacceptable for the Transvaal but in regard to Durban was 'fair' and 'reasonable' and 'not discriminatory' is difficult to reconcile with Hofmeyr's liberalism and his definitive comments on the violation of moral values that underpin civilised norms. He declared, for example,

'What is indefensible to me is that the findings of a judicial commission are accepted when they suit one's point of view and are brushed aside when they do not.' 57

And again:

'I believe that every time the facts are brushed aside and a surrender is made to racial and colour prejudice, impairing the human rights of a part of our people, every time that happens we are sapping the moral foundation of leadership which the European people in South Africa enjoy today.' 58

57. Macdonald, Jan Hofmeyr: Heir to Smuts, 100; see also, Pachai, The South African Indian Question, 169.

58. Paton, Hofmeyr (Abridged Edition), 291; see also, Hansard, Debates of the House of Assembly, Vol.46, 14.4.1943, Cols.5394-5400; L.De Villiers, South Africa Drawn in Colour: The Smuts Years 1945-46 (Sandton, Gordon Publishing, 1979), 61; V.Wetherell, The Indian Question in South Africa (Cape Town, Unie-Volkspers Bpk.(Printers), 1946), 41-42; Calpin, Indians in South Africa, 173-174.

Note: Hofmeyr received a congratulatory telegram from the Transvaal Indian Congress for his stand for Indians in the Transvaal. See, A1/Aa(Hofmeyr Papers), Telegram: Transvaal Indian Congress - Hofmeyr, 7.4.1943. A similar encomium was given to Hofmeyr in the Chiaoshengpao, Editorial, 17.4.1943, see, A1/Aa(Hofmeyr Papers), Translation, Chiaoshengpao.

Be that as it may, White rightly points out that Hofmeyr's resignation should not be regarded as mere tokenism.⁵⁹ His compromise on the issues relating to Durban was fruitful in effecting several modifications to the Bill with the Prime Minister's acquiescence.⁶⁰ Originally the 'pegging' was applicable to Natal generally. The Second Broome Commission showed a prima facie case for Durban but there was no concrete evidence of 'penetration' elsewhere. Hofmeyr insisted that the legislation should be confined to Durban and only extended to other areas on the evidence of a judicial enquiry.⁶¹ Secondly, the prohibitions were to apply equally to Whites and Indians, and not the Indians alone.⁶² Other concessions were: appointment of a judicial commission of enquiry to investigate the alleged lack of amenities provided by the D.C.C. for the Indian community; the duration of the 'pegging' should not exceed three years; and finally that 'pegging' would be suspended should it be found that the D.C.C. failed to provide adequate amenities for its Indian burgesses.⁶³

59. W.B.White, 'The Evolution of Indian Policy in Natal, 1943-1945' (University of Natal, Pietermaritzburg, History Workshop, Natal c1930-1960, 29-30.10.1980), 5; see also, White, 'The Evolution of Policy, 1943-1948', 27-28.

60. The Forum, (17.4.1943), (6), (3), 1.

61. The Rand Daily Mail, Editorial, 16.4.1943.

62. Ibid., see also, The Forum, (17.4.1943), (6), (3), 1.

63. Rand Daily Mail, Editorial, 16.4.1943; see also, S.G.Millin, The People of South Africa (London, Constable and Co.Ltd., 1951), 234; The Forum, (17.4.1943), (6), (3), 1-3; 'The Indian Penetration Bill', (1.5.1943), 65.

Smuts's concessions to Hofmeyr were necessary to ensure the safe passage of the Bill through Parliament. Although the legislation tarnished his international prestige Smuts considered the 'Pegging Bill' important because it was the means by which he could appease the electorate in Natal. At the same time it would help to ease the tension within his coalition government.⁶⁴

Only the Africans' Representatives in the House of Assembly actively opposed the whole Bill.⁶⁵ They stood alone in a division against its Second Reading with several members of the United Party abstaining. On 21 April 1943 the 'Pegging Bill' was read a third time and it proceeded to the Senate. The following day, Senator Edgar H. Brookes presented a petition from the N.I.A. praying that the Senate should not approve the Bill.⁶⁶ With his usual perspicacity Brookes struck at the very root of the issue. He considered the Bill as bearing 'many of the marks of panic legislation, introduced as it has been in the last days of a dying parliament, and arriving as it does in our House a few days before the end of the session, in a somewhat thin House, and containing as it does what may in fact be a decisive new departure in favour of Indian segregation.'⁶⁷

64. See above 161-162; for more details concerning the tension within the coalition government see, K.A.Heard, General Elections in South Africa, 1943-1970 (London, Oxford University Press, 1974), 15-29; White, 'The Evolution of Policy, 1943-1948', 24-26.

65. A410/B.2.7 (File 1) (Ballinger Papers), Statement by M.Ballinger, 'Restrictive Legislation against Indians:...', 2. These were D.B.Molteno (Cape Western), G.K.Hemming (Transkei) and Mrs V.M.L.Ballinger (Cape Eastern); see also, The African World, 24.4.1943, 55; The Forum, (24.4.1943), (6), (4), 3; J. Lawrence, Harry Lawrence, 150.

66. Hansard, Debates of the Senate, 22.4.1943, Col.2042; see also, Pachai, The South African Indian Question, 170, where Pachai also refers to the 'last ditch' representation of the Government of India.

67. Hansard, Debates of the Senate, 22.4.1943, Col.2067; see also, B. Pachai, The South African Indian Question, 170.

Senator H.M.Basner in direct, pugnacious terms reiterated the grave moral questionability of the Bill being spawned 'as a result of a vulgar parochial comedy in Durban, the election scramble of a coming election.'⁶⁸ He condemned the Bill as being symptomatic 'of a diseased social order, of a social order which seeks to solve all its difficulties and problems in only one way, by appeasing the man who has the vote at the expense of the man who has not the vote;...'⁶⁹ With Senators Brookes and Basner dissenting the Bill received the blessing of the Senate.⁷⁰

And so the Bill emerged as Act No.35, 1943, being assented to by the Officer Administering the Government on 28 April 1943.⁷¹ The principal facets of the Act for Durban can be briefly outlined as follows:

68. Hansard, Debates of the Senate, 22.4.1943. Col.2088.

69. Ibid., Col.2089.

70. The Natal Daily News, 24.4.1943.

71. Union of South Africa, Government Gazette Extraordinary, (6.5.1943),(CXXXIII),(3191).

The Act was called The Trading and Occupation of Land(Transvaal and Natal) Restriction Act, 1943. The legislation was in two parts, one affecting the Transvaal, the other Natal. Clauses 5-10 had special reference to the situation as obtaining in Durban. As stated in Chapter Three, 123, the Act 'pegged' the position of purchase of land in Durban and came to be dubbed the 'Pegging Act'.

Durban became a proclaimed area in which the sale of property between Europeans and Indians was prohibited except by permit issued by the Minister. The act was made retrospective to 22 March 1943. The Governor-General was empowered to abrogate the Bill or to extend the restrictions of the Bill by proclamation to other parts of Natal on the recommendation of a commission. The legislation also affected the right to occupy land or premises, acquisition of shares or debentures in any company which was involved in such affected land or premises or held such right to such property or premises. The effect of the legislation was to 'peg' the current occupation of land or premises by Asiatics in the municipal area of Durban until 31 March 1946.

The legislation 'not only provoked the bitter resentment of the local Indian community, but was denounced in the most irate terms in India.'⁷² Needless to say Smuts became the primary object of vituperation because he had had deserted the idealism about which he preached.⁷³

Mahomed Ali Jinnah, president of the Muslim League, condemned the legislation in the strongest terms as being 'contrary to all the canons of justice and fairplay.'⁷⁴ The Times of India, Bombay, declared that the legislation 'stinks of racialism and runs counter to the general understanding that Indians in South Africa should be encouraged to adopt Western standards of living.'⁷⁵ Sir Benegal Rama Rau, former High Commissioner for India in South Africa, appealed to Smuts to 'rise above the exigencies to Party politics and stand firmly by the principles he has so often and so eloquently proclaimed.'⁷⁶ The Rev. Pitt Bonarjee

72. Friedman, Smuts: A Reappraisal, 169; see also, Pachai, The South African Indian Question, 170-171, for international attention focussed on the 'Pegging Act'.

73. J. van der Poel (Ed.), Selections from the Smuts Papers, Vol. VI, 426.

74. Indian Opinion, 23.4.1943, 98; see also, Indian Views, 23.4.1943, 4.

75. Times of India, 20.4.1943 as quoted in The African World, 24.4.1943, 55.

76. Indian Views, 23.4.1943, 4.

saw the 'Pegging Act' as segregation being made compulsory by law and reducing the Indians to inferior citizenship.⁷⁷ Some Indians demanded that economic sanctions be enforced against South Africa by India in retaliation to the 'Pegging Act'.⁷⁸ In an official statement dated 27 April 1943 the Government of India 'expressed profound regret and concern' that the 'Pegging Act' had been promulgated⁷⁹ and that their suggestions made in previous representations had not been adopted. The Government of India was in full accord with general public opinion in India that the legislation was 'repugnant, unnecessary, and inopportune.'⁸⁰

Dr N.B.Khare, Government Member in charge of Indians overseas, speaking in the Central Assembly, New Delhi, in reference to the 'Pegging Act' stated: 'Had India been independent, she would have considered this a casus belli against South Africa.'⁸¹ Eventually as a reaction to the 'Pegging Act' the Government of India passed the Reciprocity Act Amendment Bill on 3 August 1943 after a third reading,⁸² imposing 'on residents of a non-reciprocating country of the Commonwealth the same

77. P.Bonarjee, The Indian Problem in South Africa (Hove, British India Commonwealth League, Tract No.5, 1945), 25.

78. Swami B.Dayal (Sannyasi) et al., Economic Sanctions against South Africa, Their Need and Feasibility (New Delhi, Commerce and Industry, 1944), 1-9.

79. The African World, 1.5.1943, 70.

80. Ibid., 70; see also, The Leader, 24.7.1943, 4, for comments made by speakers at Mass Meetings in various parts of India; Kondapi, Indians Overseas, 1838-1949, 268.

81. P.S.Joshi, The Struggle for Equality (Bombay, Hind Kitabs Ltd., 1951), 90; see also, The Leader, 2.10.1943, 1; Pachai, The South African Indian Question, 174.

82. The African World, 7.8.1943, 86.

Commonwealth the same disabilities as were applied in that country to Indians.' ⁸³ However, since the High Commissioner for India was returning to India in September 1943 it was decided to defer any retaliatory action in terms of the Reciprocity Act until the Government of India had conferred with its High Commissioner. ⁸⁴

In Durban the Indian community resorted to mass meetings and protests. ⁸⁵ The S.A.I.C. convened a conference at Johannesburg on 26-28 June 1943. ⁸⁶ It was opened by Sir Shafa'at Ahmad Khan, High Commissioner for India. Referring to the 'Pegging Act' the High Commissioner stated that 'there was absolutely no justification for such a measure at all.' ⁸⁷ He referred also to the undue haste of the Bill through Parliament and the fact that it affected a community which had no representation in Parliament. ⁸⁸

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83. Lord Hailey, An African Survey, A Study of Problems arising in Africa south of the Sahara (London, Oxford University Press, 1957), 396; see also above, Chapter Three, 122, f/n. 187 and below Chapter Six, 237, f/n. 158.
84. Indian Views, 6.8.1943, 9; see also, Indian Views, 10.9.1943, 2 for comment by Trek on the Reciprocity Act. For further details of the reaction to the 'Pegging Act' in India see, P.S.Joshi, Verdict on South Africa (Bombay, Thacker and Co.(Pty.)Ltd., 1945), 320-322; Pachai, The South African Indian Question, 171-174.
85. See, The Leader, 24.4.1943, 5, for details of the mass meeting convened by Trade Unions and political and social bodies.
86. Dayal, S.A.I.C., Sixteenth Session, 26-28.6.1943, 1. It is interesting to note that the last session of the S.A.I.C. was held in 1935. Ibid., 3, in address by Sir Shafa'at Ahmad Khan.
87. Ibid., 8, address by Sir Shafa'at Ahmad Khan. For further copy of the address see, UNISA, Accession 105, 6.1.5.
88. Dayal, S.A.I.C., Sixteenth Session, 26-28.6.1943, 9; see also, Indian Views, 2.7.1943, 3, for further comments on opening address.

Ahmed Ismail, the President of the S.A.I.C., expressed disappointment that representations made by the Indian community were all in vain. He said: 'All our representations were scorned, not one word, not one comma of the Pegging Bill was altered.'⁸⁹ Pertaining to the 'Pegging Act' the S.A.I.C. resolved that the Act was 'a positive violation of the uplift Clause of the Capetown Agreement' and was inconsistent with the Atlantic Charter and the 'ideals of democracy, liberty, and freedom' for which allies of the United Nations were waging a war. Further it called upon the Government of India 'to sever diplomatic relations with the Union Government and recall its High Commissioner in protest against the Act 'and in order to maintain India's izzat...in the eyes of the world...'⁹⁰ Other resolutions passed at the Conference called for closer co-operation with non-European organisations in the political, economic and educational fields; presentation of a memorandum on the Charter of Indian Rights in the Union of South Africa to the Prime Minister and the Government; authorising the appointment of a deputation to tour India, the United States and Britain as well as contacting the leaders of the United Nations at the peace conference after the war to enlighten public opinion of the disabilities of, and the discrimination against, Indians in South Africa, should the requests of the Indian community not be granted; and the achievement of greater unity in the ranks of the Indian people especially in Natal.⁹¹

89. Dayal, S.A.I.C., Sixteenth Session, 26-28.6.1943, 20.

90. Ibid., Resolution No.2, 24-25; see also, Indian Views, 16.7.1943, 7; Indian Opinion, 9.7.1943, 161. The Resolution was moved by S.M.Nana and seconded by George Singh.

91. Dayal, S.A.I.C., Sixteenth Session, 26-28.6.1943, 25-31; see also, I.A.P., S.A.I.C., Resolutions passed at Sixteenth Session, 26-28.6.1943; Indian Views, 16.7.1943, 7; The African World, 3.7.1943, 10. Other resolutions were of minor importance such as recording of thanks to various people.

When a deputation of the S.A.I.C. went to see Smuts to place before him the resolutions of the Conference, Smuts refused to see the deputation 'in view of the threat of appeal to other countries.'⁹² Smuts was churlish in his attitude. There was little else the Indians in South Africa could do except focus the attention of the outside world on their plight. S.R. Naidoo aptly stated in this connection: 'The question of our nationality has not yet been decided and as we are treated like the step-children of the country we must appeal to the outside world.'⁹³ Kajee's riposte, as well, is noteworthy with reference to interference from India: 'It was in the hands of General Smuts to prevent any intervention from India in South African affairs, and that was to make the Indians of this country its citizens by extending the rights of citizenship.'⁹⁴ At any rate a precedent had been created for India to intervene on behalf of Indians in South Africa. The Cape Town Agreement was evidence of the Union's acknowledgement of such a situation.⁹⁵ Dr N.B. Khare in support of the Indian community in South Africa declared: 'Indians in South Africa have every right to expect human and just laws. So long as these rights are denied them, they have every right to appeal to another country.'⁹⁶

The enforcement of the 'Pegging Act' soon followed. Those who contravened the Act were taken to court. The first and most significant of

92. Joshi, Verdict on South Africa, 322; see also, Indian Views, 10.9.1943.

93. Pachai, The South African Indian Question, 171.

94. The Leader, 14.8.1943, 1.

95. Ibid., 1; see also, Pachai, The South African Indian Question, 171.

96. Indian Views, 10.9.1943.

such cases was that involving P.R.Pather. He was charged before Mr D.H.Mearns, the Chief Magistrate, Durban Court, on 9 July 1943 for occupying 232 Moore Road on 14 May 1943, without the authority of a permit.⁹⁷ He was deemed to have contravened Section 6(1) of the Act 35 of 1943.⁹⁸

The premises had been bought by Mrs Pather from the Dutch Reformed Church on 17 December 1942.⁹⁹ Occupation of the premises was only allowed after the full purchase price had been paid. By the 13 March 1943 the 'risk' of the property had passed to Pather.¹⁰⁰ As the property was being damaged by vandals Pather sent a relative to occupy the servant's quarters from the 13 March 1943. On the 16 April 1943 the balance of the purchase price was paid. The key to the dwelling-house was then handed to Pather, who at that stage moved into the house with his family.

In his judgment the magistrate maintained that the Court had to accept that Pather's relative had been on the premises. It had to decide therefore whether such occupation was deemed to be occupation in terms of the Act. He concluded 'that it was not the occupation such as was required by law.'¹⁰¹ The magistrate while conceding that Pather's

97. Indian Views, 16.7.1943, 7; see also, The Leader, 19.6.1943, 1.

98. I.A.P., Transcript of Judgment by Justice J.Selke, Pather vs Rex, Supreme Court, Pietermaritzburg, 27.8.1943, 3; see also, Pietermaritzburg, Supreme Court, 113/1943, Pather vs Rex, 27.8.1943.

99. P.R.Pather, 'Diabolical Piece of Legislation', Reprint from The Leader, 20.11.1943.

100. Transcript of Judgment, Pather vs Rex, 27.8.1943, 2.

101. The Natal Daily News, 9.7.1943.

action was 'perfectly bona fide' in purchasing the house for his personal occupation and that he was in an 'invidious position' in relation to the law, he was nonetheless guilty of having contravened the Act.¹⁰² He did not impose any penalty except that Pather should come up for sentence in six months if called upon.¹⁰³ Pather appealed against his conviction. However, Justice J.Selke dismissed Pather's appeal and confirmed the conviction and sentence.¹⁰⁴ Justice J.P.Hathorn concurred.

On 29 October 1943 the case came up before Mr H.Barrett, Chief Magistrate of Durban, to show cause why sentence should not be passed on Pather in consequence of his conviction on 9 July 1943.¹⁰⁵ The case was adjourned until 12 November 1943 to await the outcome of Pather's application for a permit. It was refused.¹⁰⁶ When the matter came before the Court again, Pather submitted a signed statement¹⁰⁷ to the Court before sentence was passed. He stated that he was determined 'to submit to the consequences of the law and to its extreme penalty.'¹⁰⁸ To him such action was the most positive display of his protest and indignation at what he conceived as the 'most diabolical piece of legislation, of which there is hardly any parallel in any civilised country.'¹⁰⁹

102. Ibid.

103. Ibid.

104. Transcript of Judgment, Pather vs Rex, 27.8.1943, 7.

105. The Natal Mercury, 30.10.1943.

106. Indian Views, 19.11.1943, 5.

107. P.R.Pather, 'Diabolical Piece of Legislation'; see also, Indian Views, 19.11.1943, 2-3.

108. P.R.Pather, 'Diabolical Piece of Legislation'.

109. Ibid.

Pather claimed that the State had taken advantage of a technical issue to secure a conviction. He concluded: 'A South African court has found me guilty, but in doing so it has placed South Africa on trial at the bar of world opinion.'¹¹⁰ Ultimately he was fined £5 or seven days' imprisonment.¹¹¹ When he failed to vacate his premises by 7 February 1944, the magistrate ruled that the sentence would operate.¹¹² He declined to pay the fine and requested to be escorted to jail. But some unknown person paid the fine.¹¹³ Pather retorted, perhaps somewhat churlishly:

'Whoever has paid the fine is a traitor to the Indian cause. I was fighting for a principle and was attempting to establish the rights of the Indian people in South Africa. I only trust that the person who paid that is not an Indian. If he is then I have already described him. He joins the ranks of the world's Quislings. I cannot say anything further.'¹¹⁴

Pather did not vacate his premises still. He was convicted once more and had to pay a fine of £20 or one month's imprisonment, with a further two months' sentence suspended provided he vacated the premises by 30 June 1944. Once again he was prepared to go to jail. But some anonymous person again paid the fine.¹¹⁵

110. Ibid., see also, Indian Views, 19.11.1943, 3.

111. Pachai, The South African Indian Question, 175.

112. The Leader, 15.1.1944, 1.

113. Indian Views, 21.1.1944, 5.

114. The Leader, 15.1.1944, 1.

115. The Leader, 13.5.1944, 1.

When the Pretoria Agreement was being negotiated¹¹⁶ Pather as a member of the N.I.C. committee decided to vacate his premises at 232 Moore Road. He considered the situation as being delicate for the success of the Agreement and the negotiations. He conceived such an enterprise, despite the inconvenience, as a sacrifice and 'a gesture of goodwill to the Union Government.'¹¹⁷ But the Pretoria Agreement proved to be stillborn. So Pather continued to remain in his house in defiance of the Act. On 2 November 1944 he was apprehended and lodged in prison.¹¹⁸ He stated in Court: 'I am prepared to serve the two month's imprisonment in the interests of my community...'¹¹⁹ A mass meeting was convened the following day, 3 November 1944, to protest against Pather's imprisonment; at the same time the meeting recorded its 'unanimous approval and wholehearted support of Pather's action taken in defence of his principles and of his stand on behalf of the whole Indian community in South Africa.'¹²⁰ Eventually the authorities ejected Pather and his family from their home.

There is little doubt that P.R.Pather's case was the acid test for the 'Pegging Act'. The conviction against Pather lacked strategic thrust on the part of the Government and was a serious source of consternation. It was also embarrassing to the Government and it received wide publicity in South Africa and abroad. Pachai states that Pather's case

116. See below, Chapter Six, 203-208.

117. The Leader, 1.7.1944, 1.

118. The Leader, 11.11.1944, 5; see also, The Natal Daily News, 3.11.1944.

119. Ibid.

120. The Leader, 11.11.1944, 5; see also, Palmer, The History of the Indians in Natal, 127; Calpin, Indians in South Africa, 190.

was even the subject of questions asked in the House of Commons.¹²¹ Moreover the Union Government would have been keen to prevent convictions against Indians in terms of the 'Pegging Act' because of reactions from India: 'in the eyes of nationalists in India imprisonment was the garland of martyrs'.¹²²

Out of the turmoil and incertitude surrounding the agitation against the 'Pegging Act' the one positive outcome was the move towards the unity of Indian leaders¹²³ and overtures towards other non-European groups. The latter took the form of a suggestion for co-operation on specific issues 'with the object of safeguarding and promoting the Political, Economical and Educational interests of the Non-European peoples of South Africa.'¹²⁴

On 17 April 1943 a mass meeting had been convened by some 25 Durban organisations of which 17 were trade unions and other political and social bodies.¹²⁵ At this meeting an Anti-Segregation Committee of Action was formed to bring about unity amongst the Indian people and to conduct a campaign and militant mass struggle against the 'Pegging Bill' as well as to all future segregation and expropriation measures.¹²⁶ The Anti-Segregation Committee appealed for a coalescing of effort by the various Indian organisations, particularly the N.I.A. and the N.I.C.

121. Pachai, The South African Indian Question, 175.

122. Calpin, Indians in South Africa, 190-191.

123. Palmer, The History of the Indians in Natal, 123; see also, Johnson, 'Indians and Apartheid in South Africa', 63.

124. Dayal, S.A.I.C., Sixteenth Session, 26-28.6.1943, Resolution 3, 25-26. The Resolution was proposed by Councillor A. Ismail and Seconded by A. I. Kajee; see also, I.A.P., (Minute and Agenda Book, N.I.C., First Biennial Conference, 31.5.1947-1.6.1947), Secretary's Report, Annexure U; also, UNISA, Accession 105, 7.1.3. for a further copy of the Minute and Agenda Book.

125. The Leader, 24.4.1943, 5.

126. Indian Opinion, 18.6.1943, 141; see also, The Leader, 19.6.1943, 5. Not to be confused with the Anti-Segregation Council; see below, 211.

and the trade unions.¹²⁷ The Committee felt that the public should be made aware of the implications of the 'Pegging Act' and adopted a programme of meetings in the areas of Durban and its environs, in factories, chief country districts of the province, publication of a comprehensive pamphlet dealing with the 'Pegging Act' and a mass petition.¹²⁸

In the meanwhile the officials of the S.A.I.C. who were in Cape Town met with the High Commissioner for India who suggested that effort should be made to unite the Indian political organisations. The S.A.I.C. officials agreed to convene an S.A.I.C. Conference in Johannesburg.¹²⁹ Because of the split in the political organisations, representation at the Conference presented a problem. It was decided that representation from the Cape and the Transvaal be as usual; but for Natal there were to be 30 delegates comprising 15 nominees from each of the N.I.C and the N.I.A., whose names had to be confirmed at a mass meeting.¹³⁰

While the N.I.A. responded with alacrity, the N.I.C. prevaricated¹³¹ refusing to submit the names of its nominees for ratification by a mass meeting.¹³² Further confusion and contradiction ensued because the 'Nationalist Bloc' of the Transvaal Indian Congress was not represented nor were the members of the Cape Indian Association. At the S.A.I.C. Conference, P.R.Pather and J.W.Godfrey, for the N.I.A., expressed willingness to participate in the conference provided that the

127. The Leader, 24.4.1943, 5.

128. Indian Opinion, 18.6.1943, 141; see also, The Leader, 19.6.1943, 5; see also, Indian Views, 13.8.1943, 5, where details are given of a meeting to discuss these objectives. Meeting was held on 1.8.1943.

129. I.A.P., S.A.I.C. Sundry Correspondence: A.Ismail, A.I.Kajee, S.R.Naidoo and S.M.Nana - The High Commissioner for India, 15.4.1943.

130. Ibid.; see also, The Leader, 26.6.1943, 5; Indian Opinion, Editorial, 2.7.1943.

131. Ibid.

132. Pahad, 'The Development of Indian Political Movements', 180.

'Nationalist Bloc' of the Transvaal Indian Congress was given representation by eleven delegates and the Cape Indian Association by two.¹³³ Their demand was rejected and the N.I.A. withdrew.

The S.A.I.C. Conference commenced in Johannesburg on 26 June 1943.¹³⁴ But it was not a truly representative conference of all Indian political organisations in South Africa. It 'began its sessions with a Nana Kajee-Ismail character.'¹³⁵ The irony of the whole situation was that the conference attempted to settle the differences between the N.I.A. and the N.I.C. without the presence of the former. When the S.A.I.C., dominated by the Kajee, Ismail and Nana factions accepted the N.I.C. affiliation instead of the more widely representative N.I.A., Indian unity seemed to take a further knock.¹³⁶ Cassim Jadwat, the leader of the Cape delegation chided, the delegates:

'If we continue as we are composed
we are not working for unity, we
barely represent 30 to 40 per cent
of the Indian community and what
we decide cannot be said to reflect
the viewpoint of the majority of
the South African Indians.'¹³⁷

The matter was complicated further: Kajee adopted a defeatist attitude and in 'an emotional outburst attacked moves for unity' while S.R.Naidoo, one of the Joint-Secretaries of the S.A.I.C., resigned as a result of the breakdown of the unity attempt.¹³⁸

133. The Leader, 3.7.1943, 4.

134. Note: Pahad, 'The Development of Indian Political Movements', 180, gives the date as July, 1943. This is an error.

135. Indian Opinion, 9.7.1943, 161.

The S.A.I.C. at this time was controlled by the moderates:

A.I.Kajee - N.I.C.;

S.M.Nana - Transvaal Indian Congress; and

A.Ismail - Cape Indian Congress and S.A.I.C. Vice-President.

136. The Leader, 17.7.1943, 3.

137. Indian Opinion, 9.7.1943, 161;

Note: White, 'The Evolution of Policy, 1943-1948', 32, attributes this statement to a Cassim Sadirat. This is quite obviously a typographical error.

138. Indian Opinion, 9.7.1943, 161; see also, Pahad, 'The Development of Indian Political Movements', 180.

However, before the end of the conference Sir Shafa'at Ahmad Khan addressed the delegates. The High Commissioner for India made 'an urgent appeal for Indian unity in South Africa.'¹³⁹ With increasing demands for unity against the 'Pegging Act' survival tactics prevailed over parochial differences of opinion.

Informal meetings between A.I.Kajee and P.R.Pather resulted in a spontaneous effort to terminate the rift between the N.I.C. and the N.I.A.¹⁴⁰ A pledge was signed by the two leaders and leading members of the Indian community on 18 July 1943.¹⁴¹ The pledge underscored the implications of the 'Pegging Act'. The existence of two political organisations was conceived as being 'inimical to the interests of the Indian community,...'¹⁴² Experience had shown that there was a mere duplication of work and a waste of effort, money and time. In any case the two organisations did 'not differ on any fundamental policy.'¹⁴³ It was decided that the Natal Indian Congress (established by Mahatma Gandhi in 1894) should be reconstituted. Pather and Kajee were to be empowered to enrol membership and that a general meeting of such members should be called to elect officials equally representative of the two organisations. The declaration was to be ratified by the committees of the N.I.A. and the N.I.C. and the respective organisations would then dissolve. It was also stated that the proposed merger had the approbation and support of Sir Shafa'at Ahmad Khan, the High Commissioner for India, as well as Councillor A.Ismail, the President of the S.A.I.C.¹⁴⁴

139. Indian Opinion, 9.7.1943. 162.

140. The Leader, 24.7.1943, 1.

141. Minute and Agenda Book, N.I.C., 19-20.2.1944, Unity Agreement, 18.7.1943; see also, The Leader, 24.7.1943, 1; Pahad, 'The Development of Indian Political Movements', 180-181.

142. Minute and Agenda Book, N.I.C., 19-20.2.1944, Unity Agreement, 18.7.1943, Clause 2.

143. The Leader, 24.7.1943, 1.

The High Commissioner for India regarded the merger of the N.I.A. and the N.I.C. as 'the greatest achievement of the Indian community in the present generation' and stated that 'the Indian community has been divided into two hostile camps for nearly 14 years, and suffered seriously in almost every sphere of activity, owing to its disunity. Its unimpeded progress is now assured.'¹⁴⁵ The unity move was also welcomed by the militants. A special appeal had gone out to the trade unionists to support it and provide it with a broad base.¹⁴⁶

The inaugural meeting of the N.I.C. (established by Mahatma Gandhi in 1894) took place on 29 August 1943.¹⁴⁷ At this meeting an agreed list of office bearers¹⁴⁸ to serve a probationary period of 12 months was agreed upon. Some 30 Vice-Presidents and 45 members of the Committee were elected. The changing mood of Indian politics was evinced by the fact that for the first time radicals were elected onto the N.I.C. Committee.¹⁴⁹ The High Commissioner **appealed** to the Indian community to maintain 'the solidarity and unity of the community' which should not be 'impaired again.'¹⁵⁰ He expressed great pleasure that he had been instrumental to some extent in the achievement of unity amongst the Indian community.¹⁵¹

145. The Natal Mercury, 4.8.1943; see also, Indian Views, 13.8.1943, 3.

146. Pahad, 'The Development of Indian Political Movements' 181; see also, Johnson, 'Indians and Apartheid in South Africa', 63.

147. The Leader, 28.8.1943, 1.

148. The officials so elected were:

President : Mr J.W. Godfrey.

Chairman of Committee : Mr A.I. Kajee.

Joint Hon. Secretaries : Messrs P.R. Pather and A.B. Moosa.

Joint Hon. Treasurers : Messrs T.N. Bhoola and A.M. Moolia.

Indian Views, 3.9.1943, 2.

149. Some of these were: George Singh, D.A. Seedat, George Ponon, M.D. Naidoo, Billy Peters, Dr G.M. Naicker.

150. Khan, The Indian in South Africa, 381.

151. Ibid., 387.

The 'Pegging Act' was 'the first major inroad into the fundamental rights of ownership and occupation'¹⁵² of property by Indians in Natal. This was a violation of the original understanding with the Indian Government¹⁵³ that Indian immigrants having completed their indentureship would enjoy similar vested rights as their European counterparts. The Act was seen as an attempt to trammel the natural expansion of Indian-occupied areas as well as to restrict outlets for investments.¹⁵⁴ Europeans in the Old Borough owned approximately 5 012 acres as against 400 acres owned by Indians. The claim then that the Act was reciprocal to Indians and Europeans was 'an eyewash',¹⁵⁵ : because of the existing disparity the 'pegging' meant that Indians would have an extremely restricted market for acquisition of property. Mabel Palmer's comment is most pertinent: 'In form, the Act applied equally to Europeans and to Indians. In fact, however, its restrictive effects would be felt mainly by Indians.'¹⁵⁶ This was seen in the 'greater demand' and 'inadequate supply' of land and property which caused Indian areas to become crowded. Property values rose astronomically exceeding even the war 'inflation levels.'¹⁵⁷

152. A.Choudree, 'The Indian Problem in South Africa', The Asiatic Review, (July 1946), (XL11), 205; see also, Pather, Seventy Years of Frustration and Unhappiness, 7.

153. Palmer, Natal's Indian Problem, 23.

154. Maasdorp and Pillay, Urban Relocation and Racial Segregation: The Case of Indian South Africans, 90.

155. P.R.Pather, 'Observations on the Pegging Act', in Minute and Agenda Book, N.I.C., 19-20.2.1944.

156. Palmer, The History of the Indians in Natal, 122; see also, Hancock, Smuts: The Fields of Force: 1919-1950, 461, where a similar view is expressed.

157. Calpin, A.I.Kajee, 133.

In freezing the existing Indian residential areas and business holdings in Durban the 'Pegging Act' represented a decisive step towards entrenching segregation.¹⁵⁸ As such it 'signified a united European resolution to confine the South African Indians into watertight compartments' and to legislate 'inferiority for a race whose enterprise and labour' had made a huge contribution to the progress and prosperity of Natal.¹⁵⁹ The enactment of the 'Pegging Act' was a 'repudiation of the Cape Town Agreement, which in its "Uplift Clause" vouchsafed to Indians a policy of uplift.'¹⁶⁰ In this context the Act seemed paradoxical. As Indians acquired properties in 'more attractive and better serviced European suburbs' in keeping with the desire to adopt a higher and westernised standard of living they were prevented from doing so by the 'Pegging Act'.¹⁶¹ It symbolised the paranoia amongst anti-Indian agitators that no Indian whatever his education, economic status and culture was fit to live in juxtaposition with a European.

158. P.Walshe, The Rise of African Nationalism in South Africa: The African National Congress, 1912-1952 (London, G.Hurst and Company, 1970), 279; see also, S.A.I.R.R., Fourteenth Annual Report, 1942-1943 (Johannesburg), 13-14.

159. Joshi, Verdict on South Africa, 317.

160. The Leader, 27.11.1943, 5, Statement by S.R.Naidoo; see also, Minute and Agenda Book, N.I.C., 19-20.2.1944, Memorandum submitted by the N.I.C. to Senator, the Hon. C.F.Clarkson, Minister of the Interior, on Act 35/43, commonly known as the "Pegging Act", 2.12.1943, 1.

161. H.Kuper, 'The Indian Elites in Natal, South Africa' (University of Natal, Durban, Institute for Social Research, Social Science Conference, 16-22.7.1956), 131.

The 'Pegging Act' must rank as one of the pieces of legislation in South African Parliamentary history to secure 'such unanimity...in the House of Assembly.'¹⁶² Only the Africans' Representatives in the House of Assembly opposed the Bill, while Hofmeyr's resignation and subsequent abstention in voting during the division on the Second Reading focussed attention on the blatant discriminatory nature of the legislation and indicated the friendless position of the Indians.¹⁶³ The conscience of the Government was uneasy because of the possible repercussions to the 'Pegging Act' both within South Africa and internationally. But its conscience did not weigh heavily enough to prevent the Bill from being rushed through the House to become law in record time.¹⁶⁴

The 'Pegging Act' was a surrender by Smuts to the vicious racial outcry of Europeans in Natal against Indians, with the most virulent anti-Indians being in the Dominion Party.¹⁶⁵ As such the legislation was a political expediency: a surrender to the shibboleths of prejudice .

162. Calpin, Indians in South Africa, 177.

163. M.Webb, 'The Indian in South Africa: Towards a Solution of Conflict', Race Relations, (1944), (X1), (1), 2.

164. K.C.L., K.C.M.17062 (Mabel Palmer Papers), Notes on Indians, 4; see also, M.Webb, 'Indian Land Legislation', 209.

165. A. Choudree, 'The Indian Problem in South Africa', 204.

Note: The Dominion Party included in its Social Policy that there would be 'No racial discrimination of any kind between citizens of British or Dutch descent in South Africa, and a fair treatment shall be accorded to all races and classes in the Union.' It however singled out the Asiatic community for discriminatory treatment:

'(a) The maintenance of restrictions of Asiatic immigration.

(b) Opposition to the further penetration of Asiatics amongst the European and Native populations.

(c) The encouragement of repatriation of Asiatics.

(d) Stricter supervision of Asiatics in commerce and industry, especially in relation to wage determinations.'

I.A.P., 'Principles of the Dominion Party of South Africa', Leaflet, Clauses 6(a) and 12.

Smuts had allowed the spirit of racial arrogance to go unchecked. The debates and voting in the House of Assembly were ample evidence of the intensity of feeling against the Indian community. As the High Commissioner for India succinctly put it: 'The platform on which an overwhelming majority of Europeans agree is that of European supremacy and non-European subjection,...' ¹⁶⁶

The 'Pegging Act' in the final analysis showed a bankruptcy of statesmanship on the part of Smuts. He allowed the promulgation of legislation which was a contradiction of the basic principles of democracy when a war was being fought to establish a broader democracy. ¹⁶⁷ As The Leader declared in an editorial: 'The Indian failed to understand the man who would give peace and security and a full life to all the peoples of the world except those blacks under his direct control.' ¹⁶⁸ The situation was singularly vexatious for the Indian community, which expressed the concern that the legislation might become permanent. ¹⁶⁹ It was 'an ideal programme for the production of frustration and disappointment among Indians.' ¹⁷⁰

Insofar as Indian political organisation was concerned the 'Pegging Act' shook the very foundations upon which the policy of collaboration was based and foreshadowed a change to resistance. ¹⁷¹ Despite the Government's attempts to maintain the 'Pegging Act' at a low profile, the conviction and imprisonment of P.R.Pather, a moderate leader and former member of the Lawrence Committee, dealt a death-blow to

166. Khan, The Indian in South Africa, 41.

167. Race Relations News, (5.5.1943), (V), (5), 1.

168. The Leader, Editorial, 25.3.1944, 4.

169. Hellman, Racial Laws versus Economic and Social Forces, 5.

170. Indian Views, 3.9.1943, 2.

171. Pachai, 'Aliens in the Political Hierarchy', 45.

collaboration. The formation of the Anti-Segregation Committee and its resolutions against the 'Pegging Act' ¹⁷² indicated firmly the shift from moderate gradualism in Indian politics to a new aggressiveness. It also presaged the power struggle among Indian leaders which reached a climax in 1945. Moreover the isolation characteristic of Indian politics seemed no longer tenable. Co-operation with Blacks was fast becoming the keyword. For the first time, as a result of the 'Pegging Act', we see resolutions of the S.A.I.C. evincing an incremental co-optation of other groups on political economic and educational matters. ¹⁷³

The need to mobilise all their resources against the 'Pegging Act' motivated the unity move of the two rival political bodies in Natal. A new dimension was added to Indian politics too: the young, radical, militant group was on the ascendancy and was now represented on the Committee of the reconstituted N.I.C. ¹⁷⁴ Though this element was in the minority they soon became a force to be reckoned with. Unfortunately this new found unity was brittle and shallow. A constant battle was waged between the 'pragmatists' and 'ideologists' among the Indian politicians. The former were the 'moderates' who came to be called the 'accommodationists' and the latter were the 'radicals' who were dubbed the 'confrontationists'. ¹⁷⁵

172. See, The Leader, 24.4.1945, 5.

173. See above, 182.

174. Johnson, 'Indians and Apartheid in South Africa', 63.

175. See, Ibid., passim. It is interesting to note that the consensus amongst the radical element who were interviewed by the author did not agree with the usage of this term to describe them. They stated that they were not prepared to adopt a cap in hand attitude towards the authorities and they were regarded as 'confrontationists' because Whites construed their demands for fundamental rights as being unreasonable.

The years following the 'Pegging Act' became increasingly chaotic for Smuts and his Government. The European community abandoned political pragmatism and adopted an inflexible, unilaterally determined White conception of the solution to the question of 'Indian penetration' in the Durban area. Smuts was unable to translate commitment towards Indians into a credible, coherent and relevant policy because of the intransigent attitude of the White electorate in Durban and Natal generally.

For the Indian community the 'Pegging Act' proved to be the 'watershed between collaboration and resistance.'¹⁷⁶ The fiasco of the Natal Indian Judicial Commission and the abnegation of the acceptability, feasibility and tenability of the Pretoria Agreement rapidly brought defensive and compromise politics to an end. Indian political reaction to the deprivation of inherent rights came to be dominated by an aggressive and militant spirit.

176. Pachai, 'Aliens in the Political Hierarchy', 46.

CHAPTER SIX
QUINTESSENCE OF AMBIVALENCE - THE PRETORIA AGREEMENT
AND THE NATAL ORDINANCES

In the history of Indian and European relations in South Africa, the Pretoria Agreement as an alternative to the 'Pegging Act' ranks as the quintessence of ambivalent politics. On the one hand, it was an example of sober realism and good intentions, a manifestation of leadership addressing itself to the complexities of the 'Indian penetration' issue and a desire for meaningful dialogue as opposed to moral outrage. On the other hand, the intense opposition to the Agreement and its rejection as a retrogressive step by both anti-Indian agitators and the radical element in the Indian community caused a sincere attempt at Indo-European co-operation to evolve into 'a highly incendiary issue.'¹ Apart from White,² other commentators have referred only briefly to the Pretoria Agreement. Consequently they have painted the complex problems relevant to the Pretoria Agreement with broad brush strokes. In order to appreciate the total canvas of the Agreement the study of the details and nuances are necessary.

In a memorandum to Senator C.F.Clarkson, the Minister of the Interior,³ the N.I.C. distinguished four aspects surrounding the

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1. Friedman, Smuts: A Reappraisal, 171.
 2. White, 'The Evolution of Policy, 1943-1948', Chapters Four and Five, 34-73.
 3. Senator C.F.Clarkson had been appointed as Minister of the Interior in the Cabinet reshuffle after the 1943 elections. Brookes and Webb say:
 'A better choice could not have been made, since Senator Clarkson's kind-heartedness and common sense could be relied on to soften the asperities of the [Pegging] Act.'
 E.H.Brookes and C.de B.Webb, A History of Natal (Pietermaritzburg, University of Natal Press, 1965), 291. The D.C.C.held the view that Senator Clarkson 'having lived his lifetime in Durban was very familiar' with the 'complexities of the Indian question.'
 Minutes of Council-in-Committee, Durban City Council, 19.10.1943, 2248

'penetration' issue: rural landowning and occupation; acquisition and occupation of land for commerce and industries; acquisition of landed property in urban areas for investment; and, acquisition and occupation of property for residential purposes.⁴ These aspects were also discussed at a conference with the Natal Municipal Association. When Senator Clarkson met the N.I.C. on 2 December 1943 he suggested that they should confer with the N.M.A.⁵ Clarkson made similar overtures to the N.M.A. when he met them on 3 December 1943.⁶ Both organisations agreed to discuss the Indian question as recommended by Clarkson. The round table conference between the N.I.C. and the N.M.A. took place on 17 January 1944.⁷ The Indian delegates felt that if the question of the purchase of property for investment was separated from that of residential occupation the problem would cease to exist. A.T. Allison, M.P.C., stated on behalf of the N.M.A. that the solution to the problem was to create special residential areas 'described as "open areas" in which all races may acquire land and occupy it without hindrance or restraint.'⁸ 'Closed areas' would be reserved for a particular racial group. The N.I.C. perceived this as segregation and repeatedly stated its objection to it.⁹

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4. Memorandum submitted by N.I.C. to Clarkson on the 'Pegging Act', 2.12.1943, 3.
 5. Minute and Agenda Book, N.I.C., 19-20.2.1944, Report of the Executive of the N.I.C. on the Round Table Conference between the Executive of the Congress and of the N.M.A., 1.
 6. N.A., Vol. 37, File 174(13) (D.C.C., T.C.O.), Minutes of the Proceedings of the Executive Committee of the N.M.A. at the Meeting held at Pietermaritzburg, 3.12.1943, 5; see also, The Natal Mercury, 4.12.1943; Indian Opinion, 10.12.1943, 315.
 7. N.A., Vol. 71, File 527(11) (D.C.C., T.C.O.), N.M.A., Indian Penetration, Notes of the Proceedings at the Conference of Delegates of the N.M.A. and the N.I.C. which took place at Durban on the Subject of "The Pegging Act", 17.1.1944; see also, White, 'The Evolution of Policy, 1943-1948', 36-37.
 8. Notes of Proceedings at Conference, N.M.A. - N.I.C., 17.1.1944, 15.
 9. The Leader, 22.1.1944, 5.

The deliberations were on the whole sterile. The N.I.C. was prepared to discuss only the question of the juxtapositional occupation of property between Europeans and Indians. They claimed other aspects of the acquisition of property as an inviolable right.¹⁰ The N.M.A. remained non-committal at the meeting.¹¹ This apparently intractable problem was one of the principal issues to be discussed at the Provincial Conference of the N.I.C. on 19-20 February 1944. A resolution was presented by Kajee seeking to empower the Executive Committee to follow the policy adumbrated in the memorandum submitted to the Minister.¹² Kajee maintained that on the question of acquisition for investment no concessions could be granted by the Indian people; but they would be prepared to meet the Europeans halfway on the issue of residential juxtaposition.¹³ It is apparent that Kajee wanted to protect the vested interests of the business community by accepting voluntary residential segregation. By such action Kajee was not only negating the claim of the majority of Indians, who could afford to do so, to live in good homes in residential areas provided with the necessary civic amenities, but he was also introducing a dangerous precedent for the residential segregation of the entire Indian community.

10. Notes of Proceedings at Conference, N.M.A. - N.I.C., 17.1.1944, 5.

11. They subsequently submitted their proposals. In regard to the first three points raised by the N.I.C. in their memorandum to Clarkson concerning rural areas and acquisition of property for investment, they had no objections, with certain minor provisos. In regard to the acquisition of land for residential purposes they expressed regret at the N.I.C. stand against segregation as they pressed for racial zoning in terms of 'open' and 'closed' localities. N.A., Vol. 37, File 174(13) (D.C.C., T.C.O.), N.M.A., The Indian Question in Natal, Memorandum by the Secretary, 29.3.1944, 2-6.

12. The Leader, 26.2.1944, 8; see also, Pahad, 'The Development of Indian Political Movements', 186.

13. The Leader, 26.2.1944, 8.

An amendment to Kajee's motion that 'segregation in no form whatsoever should be accepted and that there should be no negotiation on the question of the demarcation of separate residential areas' was lost by 66 votes to 143; see also, A410/B.2.7 File(1) (Ballinger Papers), Explanatory Note to Notice Convening Meeting of Committee of the N.I.C. to be held on 7th May, 1944.

Shortly thereafter, on 13 March 1944, Kajee and P.R.Pather proceeded to Cape Town to give evidence before the Select Committee on the Fisheries, Apprenticeship and Volunteers Employment Bill as well as to lead a deputation to the Prime Minister on the 'Pegging Act'.¹⁴ On 27 March 1944 the deputation submitted a lengthy memorandum to the Government pressing for the repeal of the 'Pegging Act'.¹⁵

In their argument the deputation suggested that the 'penetration' issue should be divided into two parts, that of ownership and acquisition of property for the purpose of trading, commercial enterprise and investment; and, the occupation of property for residential purposes.¹⁶ The 'Pegging Act' as applicable to Durban should be abrogated. In order to maintain the status quo temporarily in regard to the occupation of residential property, while awaiting the findings of the Natal Indian Judicial Commission,¹⁷ a Board or Committee should be established, comprising two Europeans and two Indians with a European Chairman who had

14. I.A.P.,N.I.C.,Report of Deputation to Capetown and Pretoria, n.d., 1.

15. Ibid, Annexure, Memorandum submitted by the S.A.I.C. representing the Indian Community of South Africa, to the Right Honourable Field Marshal J.C.Smuts, Prime Minister of the Union of South Africa, March, 1944. For further copies of the memorandum see, C.I.A.40, File M897, Vol.1(Commissioner of Immigration and Asiatic Affairs); UNISA,Accession 105, 7.3.7; A410/B.2.7 (File 1) (Ballinger Papers); Minute and Agenda Book, S.A.I.C., 8-10.2.1946.

16. Memorandum submitted by the S.A.I.C...to Smuts..., March,1944, 1.

17. This Commission was appointed, in terms of H.G.Lawrence's declaration during the course of the Second Reading of the 'Pegging Bill', on 8 March 1944. See, Union of South Africa, Government Gazette (Govt.Notice 426, 8.3.1944), (17.3.1944), (CXXXV),(3314), 390.

legal training, by proclamation under the War Measures Act. The Committee was to be empowered to issue occupational licences for residence in areas where 'a sharp racial distinction of residential property occupation' existed.¹⁸ The deputation believed that such an arrangement would remove the friction of juxtapositional living between Europeans and Indians.

On 29 March 1944 the deputation met with Smuts¹⁹ who expressed interest in the proposals. He stated that:

'He was anxious to settle the Indian question. He said that with Mr. Gandhi he settled the question 30 years ago and he could not see why a settlement could not be arrived at, which could endure for another 30 years.'²⁰

Senator Shepstone was deputed to sound out the views of the Natal Provincial Executive Committee and the Durban City Council. Generally the response from these quarters was 'sympathetic' and 'encouraging.'²¹ The N.I.C. report states that at the meeting arranged at Durban Douglas Mitchell, M.E.C., was opposed to the creation of a Licensing Board and opted for a system of 'radial zoning.'²² The concept of a Licensing

18. Memorandum submitted by the S.A.I.C...to Smuts..., March, 1944, 1; see also, The Natal Daily News, 29.3.1944.

19. With Smuts were Senator Clarkson, Senator Shepstone and J.H.Basson. The N.I.C. deputation comprised: A.I.Kajee, P.R.Pather, M.Jajbhay, K.Thumbie, Z.V.Parekh, C.R.Naidu. Report of Deputation to Capetown and Pretoria, n.d., 2.

20. Ibid., 2. Smuts was referring to the Smuts-Gandhi Agreement of 1914. See Pachai, The South African Indian Question, Appendix D, 287-289.

21. T.Wilks, The Biography of Douglas Mitchell (Durban, King and Wilks, 1980), 34.

22. Report of Deputation to Capetown and Pretoria, n.d., 3.

Board was initially propounded by E.R. Browne, M.P.C.²³ He considered occupation of property to be a more significant problem than ownership. He suggested that the system of licensing trading establishments to maintain good order of municipal government and affairs could be transferred to control the occupation of property.

The High Commissioner for India, Sir Shafa'at Ahmad Khan, commended this suggestion to Smuts as an alternative to the 'Pegging Act'.²⁴ He intimated that the Government of India felt that the 'Pegging Act' should be repealed as soon as an alternative measure to control housing development for residential purposes was decided upon.²⁵ He suggested further, that if abrogation of the Act was not possible because of administrative and legislative procedures then areas affected by the Act should be deproclaimed.²⁶ While the 'Pegging Act' remained in force the Government of India was under pressure to contemplate retaliatory action: the application of the Reciprocity Act of 1943, the denunciation of the Trade Agreement and the recall of the High Commissioner.²⁷ The High Commissioner warned Smuts that 'Indian opinion will not be satisfied except by concrete action,...'²⁸

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23. N.A., Vol. 37, File 174(13) (D.C.C., T.C.O.), N.M.A., Secretarial Circular, 30.11.1943, Annexure, E.R. Browne, Memorandum on Indian Penetration. For further copies of the Memorandum see: N.A., Vol. 71, File 527(11) (D.C.C., T.C.O.); Durban, (E.C. Wilks Papers, Uncatalogued), Browne - Wilks, 23.11.1943, Annexure.
24. E.C. Wilks Papers, Clarkson - Wilks, 2.2.1944.
25. A1, Vol. 157, No. 23 (Smuts Archives, Public Papers), S.A. Khan - Smuts, 16.4.1944.
26. Ibid.
27. See, White, 'The Evolution of Policy, 1943-1948', 43, f/n. 58.
28. A1, Vol. 157, No. 24 (Smuts Archives, Public Papers), Forsyth - Smuts, 17.4.1944.

Smuts, no doubt, was in an invidious position. He had to make a critical choice. With the Commonwealth Conference imminent the 'Pegging Act' on the Statute Book was proving to be 'an acute embarrassment' to him.²⁹ He was keen to avoid the excoriation of his critics especially from India at the Conference. He wished to have a 'fait accompli' on this vexing problem before departing for the Conference.³⁰

Deputations from the Provincial Administration and the N.I.C.³¹ were invited to discuss the question with Smuts in Pretoria on the afternoon of Tuesday, 18 April 1944. He was leaving for London and the Commonwealth Conference two days later. White states 'it is not clear what occurred that afternoon' and goes on to discuss G.Heaton-Nicholls' account of the proceedings.³² However the report of the N.I.C. deputation,³³ the graphic account by Douglas Mitchell³⁴ and Heaton-Nicholls' recollections³⁵ together leave little doubt as to what happened in Pretoria.

29. White, 'The Evolution of Policy, 1943-1948', 43.

30. Wilks, The Biography of Douglas Mitchell, 34.

31. At this meeting with Smuts were: Senator Clarkson; G. Heaton-Nicholls, Administrator of Natal; Senator D.G.Shepstone, Chairman of the Asiatic Affairs Advisory Board; D.E.Mitchell, M.E.C., E.C.Wilks, M.P.C. and United Party Provincial Secretary. The N.I.C. deputation comprised: A.I.Kajee; P.R.Pather; S.R. Naidoo; A.B.Moosa; T.N.Bhoola; Mahomed Ebrahim and S.M.Paruk; G.H.Calpin was also present.

Ibid., 35.

32. White, 'The Evolution of Policy, 1943-1948', 44-45.

33. Report of Deputation to Capetown and Pretoria, n.d., 3.

34. Wilks, The Biography of Douglas Mitchell, 35-37.

35. K.C.L., K.C.M.3673(a) (G.Heaton-Nicholls Papers), Interview with Heaton-Nicholls, n.d., 3-4.

At noon on 18 April 1944 the Congress deputation deliberated with Mitchell and Senator Shepstone at the Public Works Building at Pretoria at which meeting G.Heaton-Nicholls was present.³⁶ According to the N.I.C. deputation Heaton-Nicholls agreed to the proposal of a Licensing Board. At 2 p.m. the deputation met the Minister of the Interior. He was handed a memorandum³⁷ to be submitted to the Prime Minister. The memorandum had been written up in the Durban-Johannesburg train during the night of 17 April 1944³⁸ and contained the proposals of the N.I.C. which became the nucleus of the Pretoria Agreement. Mitchell and Heaton-Nicholls proposed certain modifications which the Congress delegation refused to accept.

Mitchell admitted that an hour before the meeting with General Smuts the memorandum was handed 'to the White delegation for study.'³⁹ Heaton-Nicholls later stated he was ignorant of such a document.⁴⁰ It is possible that Heaton-Nicholls tended to obfuscate the issues surrounding the N.I.C. memorandum because he may not have comprehended fully the implications of the memorandum in the short time available to him in Pretoria.

36. Report of Deputation to Capetown and Pretoria, n.d., 3.

37. I.A.P., Memorandum submitted by the N.I.C., as representing the Indian Community of Natal to the Right Honourable Field Marshal J.C.Smuts, Prime Minister of the Union of South Africa, 18.4.1944. For further copies of the memorandum see, Minute and Agenda Book, S.A.I.C., 8-10.2.1946; A410/B.2.7(File 1) (Ballinger Papers); A1/Dg (Hofmeyr Papers); C.I.A.40,File M897,Vol.1 (Commissioner of Immigration and Asiatic Affairs); A1,Vol.157, No.26 (Smuts Archives, Public Papers); Interim Report (UG 22/45, 16.3.45), Appendix A(1), 9-10; UNISA, Accession 105, 7.3.8 and 6.1.6.

38. Calpin, Indians in South Africa, 194.

39. Wilks, The Biography of Douglas Mitchell, 35; see also, in this connection Palmer, The History of the Indians in Natal, 128; Calpin, Indians in South Africa, 194.

40. K.C.M. 3673(a) (G.Heaton-Nicholls Papers), Interview with Heaton-Nicholls, n.d., 4; see also, White, 'The Evolution of Policy, 1943-1948', 44.

The N.I.C. memorandum was largely based on the S.A.I.C. document previously submitted to the Prime Minister.⁴¹ The N.I.C. was agreeable 'to a voluntary arrangement whereby machinery can be set up to control and regulate future juxtapositional residential occupation of Europeans and Indians.'⁴² A Board was to be appointed comprising five members, two of whom were to be Europeans and two Indians, with a European Chairman, who was to be an advocate or a magistrate with not less than ten years' experience. The jurisdiction of such a Board would be limited to all dwellings within the City of Durban. The Board would be empowered to exempt dwellings either singly or collectively from its jurisdiction. Finally, the Board was to issue a licence to a person of a particular racial group for the occupation of premises previously occupied by a person of another racial group.⁴³ Extension to other local authorities would be effected after investigation by the Board, with a right of appeal to the Administrator-in-Executive on all decisions of the Board. The N.I.C. had consulted with an eminent counsel, who advised that in terms of Section 85(xii) of the South Africa Act the Union Government could originate in form the required legislation through the Provincial Council.⁴⁴ It was further stipulated that the arrangement was to be of 'general application, and of a temporary character' and that when such machinery was initiated the 'Pegging Act' would be repealed or Durban would be deproclaimed from the provisions of the Act;⁴⁵ that the

41. See above, 202, f/n. 15.

42. Memorandum submitted by the N.I.C. to...Smuts..., 18.4.1944, para. 3, 2.

43. Ibid., para. 4, 2; see also, G.Heaton-Nicholls, South Africa in My Time, 316; Interim Report (UG 22/1945, 16.3.45), para. 23, 6.

44. A410/B.2.7 (File 1) (Ballinger Papers), F.R.Shaw, K.C., Opinion, Ex Parte N.I.C., 17.4.1944.

45. Memorandum submitted by the N.I.C. to...Smuts..., 18.4.1944, para. 6-11, 2-3.

solution of the Indian question must rest with the Union Government; that consultation should take place with Congress at every stage in the promotion of an Ordinance to implement the proposals; that the nomination of the personnel for the Licensing Board should to be effected in consultation with the N.I.C.⁴⁶

The discussions went on to reach unanimity.⁴⁷ The compact between the Government, the Natal Provincial Administration and the N.I.C. came to be called the Pretoria Agreement. Smuts immediately sent a cable⁴⁸ to the Viceroy of India, Lord Wavell, in which the arrangements regarding the Licensing Board, appointees and functions were briefly outlined. A press statement was issued on the same day tersely referring to the Agreement.⁴⁹

The High Commissioner for India expressed 'the hope that the Pretoria Agreement will provide a firm foundation for future racial harmony in Natal.'⁵⁰ The Government of India did not consider the Agreement as

46. Report of Deputation to Capetown and Pretoria, n.d., 3.

47. Wilks, The Biography of Douglas Mitchell, 36.

48. E.C.Wilks Papers, Copy of Original Draft of Cable from Field Marshal The Right Honourable J.C.Smuts to His Excellency the Viceroy of India regarding the Indian Agreement arrived at in Pretoria on 18.4.1944 between the Prime Minister, the Natal Provincial Government Representatives (The Honourable G. Heaton-Nicholls and Mr D.E.Mitchell, M.E.C.) and Representatives of the Indian Community. A copy was also sent to L.S.Amery, Secretary of State for India, see, A1,Vol.264,No.28(Smuts Archives, Private Papers), Telegram: Smuts - Amery, n.d. ; see also, J.van der Poel, Selections from the Smuts Papers, Vol.V1, 479.

49. See, Minute and Agenda Book, S.A.I.C., 8-10.2.1946, Press Notice issued by the Prime Minister on the 18th April, 1944; also below, 354, Appendix II; A1,Vol.157,No.27(Smuts Archives, Public Papers).

50. A1/Dg(Hofmeyr Papers), S.A.Khan - Hofmeyr, 23.5.1944.

ideal but as it was the result of local initiative and as 'the Union Government also accepted the principle of dealing with such matters by voluntary agreement in preference to statutory compulsion, the Government of India acquiesced in the Agreement.'⁵¹ For the N.I.C. the Pretoria Agreement was a unique event. They had actually succeeded in initiating legislation specifically for the Indian community. But it proved to be an ephemeral triumph. Smuts was pleased. The N.I.C. had provided him with a face-saving strategy and the modus vivendi was the answer to the dilemma that would have confronted him at the Commonwealth Conference. The Pretoria Agreement was a tremendous boost to the ego of G.Heaton-Nicholls. He wanted autonomy for the Provincial Council and this was a beginning. He was empowered to introduce legislation to deal with an issue generally considered to be the prerogative of the Central Government.

At the outset the reaction of the European press appeared favourable.⁵² There were general expressions of satisfaction that an acceptable compromise had been achieved by the groups engaged in a long and acrimonious conflict.⁵³ The Natal Mercury reported that interested Parliamentarians considered the unanimity among the participants 'as being one of the best auguries for the success of the scheme.'⁵⁴ The Natal Daily News considered it as a 'constructive contribution'.⁵⁵

51. India, Memorandum on the Position of Indians in the Union of South Africa submitted to the United Nations (1946), para. 39, 16.

52. Interim Report, (UG22/1945, 16.3.45), para. 25, 6.

53. AD843/M/E (S.A.I.R.R. - R.J.Papers), Agreement about the Pegging Act and the Pretoria Agreement, n.d.

54. The Natal Mercury, 20.4.1944.

55. The Natal Daily News, 21.4.1944.

But within two days the whole scenario changed. A concourse of protests was lodged both by Whites and Indians. Gossip and assertion about the implications of the Agreement flourished unimpeded by fact. This state of affairs was mainly the result of inadequate preparation of the media and the public by the Government.⁵⁶ The position was aggravated by the Administrator. He gave separate interviews to the three Natal daily newspapers whose reports as a result 'were contradictory and at variance with the letter and spirit of the Agreement.'⁵⁷ The first broadside against the Pretoria Agreement was fired by the D.C.C. In a letter to the Minister of the Interior and a similar one to the Administrator, it rejected the Agreement; expressed umbrage that it had not been consulted as it was the local authority to which the 'Pegging Act' applied; and, protested that only occupation and not acquisition was to be controlled.⁵⁸

The reaction of the Indian community as expressed through the Indian press was vitriolic in its criticism of the Pretoria Agreement. Indian Opinion, for instance, condemned the 'action of the Congress in principle'. They regarded the method adopted by the Congress Executive as 'irresponsible' and 'high-handed' and deprecated their having dealt with 'vitally important matters concerning the future of the Indian community in South Africa without informing the community and taking their consent...'⁵⁹ The Pretoria Agreement was later ratified by

56. Palmer, The History of the Indians in Natal, 129.

57. Calpin, Indians in South Africa, 196-197.

58. N.A., Vol. 71, File 527(11) (D.C.C., T.C.O.), The Town Clerk, Durban - The Minister of the Interior, 25.4.1944; The Town Clerk, Durban - Administrator of Natal, 25.4.1944; see also, Minutes of the Durban City Council, 24.4.1944, 392.

Note: Wilks states that the D.C.C. was consulted. See, Wilks, The Biography of Douglas Mitchell, 34; see also above, 203, f/n. 21.

59. Indian Opinion, Editorial, 21.4.1944, 116.

a meeting of the N.I.C. Committee on 25 May 1944 by 68 votes to 19 after a debate lasting four and a half hours, but the criticism against the N.I.C leadership did not wane.⁶⁰

The South African Communist Party convened a protest meeting on 25 April 1944 and described the Agreement as 'a betrayal of the Indian people.'⁶¹ A few days later, on 28 April 1944, an Anti-Segregation Council (A.S.C.) was formed,⁶² to oppose any moves of voluntary segregation. The N.I.C. leadership had exposed itself to serious challenge and at the same time provided an excellent opportunity for the 'Confrontationists' to assert their influence in the Indian political arena. The A.S.C. was not intent on forming another political organisation but were determined to make the N.I.C. more 'representative of the Indian people' exploiting the opposition to the Agreement to their distinct advantage.⁶³ The brittle unity achieved earlier in the ranks of the N.I.C. was beginning to crack.

If Indian reaction was vitriolic general European opinion was even more extreme. Whites protested vehemently against the abrogation of the 'Pegging Act' and the granting of any concession to the Indian community. The N.M.A. expressed deep concern that the Agreement had been concluded without its being consulted. It was opposed to the repeal of the

60. The Leader , 27.5.1944, 5.

61. The Leader, 29.4.1944, 5; see also, The African World, 29.4.1944, 72; The Natal Daily News, 25.4.1944.

62. The Natal Daily News, 29.4.1944.

The Provisional Committee comprised: Dr G.M.Naicker (Chairman); A.K.M.Docrat(Secretary); M.Rajab(Treasurer); George Singh; M.D. Naidoo; Dr K.Goonam and Dr S.R.Deenadayalu(Committee Members).

Pahad, 'The Development of Indian Political Movements', 189.

See, 355, Appendix III, for the A.S.C. Programme and constituent organisations.

63. The Natal Daily News, 29.4.1944.

'Pegging Act'.⁶⁴ The Durban General Council of the Dominion Party committed the Party to associate itself with public bodies to prevent the passing of any provincial legislation oriented towards the repeal of the 'Pegging Act'.⁶⁵ Copies of this resolution were circulated as broadly as possible: to the Minister of the Interior, the Administrator of Natal, to all Members of Parliament, Senators and Members of the Provincial Council. The Dominion Party soon became the centripetal force of European discontent.

But it was the Durban Joint Wards Committee which appeared to out-Herod Herod in virulence against any attempt to annul the 'Pegging Act' which they considered would be disastrous and liable to stir up political strife. They questioned the authority of Heaton-Nicholls, Mitchell and Shepstone to recommend the abrogation of the Act and repudiated their action.⁶⁶ They dismissed the Agreement as 'a complicated scheme which, stripped of all verbiage, means that Indians will be able to obtain all they desire. And what they desire is tantamount to domination in Natal.'⁶⁷ The Committee appealed to E.C.Wilks, M.P.C., to avoid dealing with the proposed ordinance to replace the 'Pegging Act' along Party lines fearing that it would be 'steam-rollered through the Provincial Council by means of a Party Caucus.'⁶⁸

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64. N.A., Vol. 37, File 174(13) (D.C.C., T.C.O.), N.M.A., Record of Proceedings at the April Quarterly Meeting of the Executive Committee, 21.4.1944, 13.
65. N.A., Vol. 71, File 527(11) (D.C.C., T.C.O.), Secretary, Dominion Party of South Africa - The Town Clerk, Durban, 8.5.1944; see also, The Natal Daily News, 28.4.1944.
66. E.C.Wilks Papers, Durban Joint Wards Committee - The Minister of the Interior, 24.4.1944; see also, for a further copy, A410/B.2.7 (File 1) (Ballinger Papers).
67. The Natal Mercury, 26.4.1944; see also, Durban Joint Wards Committee - The Minister of the Interior, 24.4.1944.
68. E.C.Wilks Papers, Durban Joint Wards Committee - E.C.Wilks, 27.4.1944.

The N.I.C became perturbed not only at the opposition of the White community and the Indian community but also at the dubious role of the Administrator.⁶⁹ On his return from Cape Town he announced in a Press interview on 1 May 1944 that the purpose of his visit was to clarify the powers and duties of the Province in executing the recommendations which may be proposed by the Natal Post-War Works and Reconstruction Commission. He maintained that such considerations were urgent. The Pretoria Agreement, according to Heaton-Nicholls, necessitated the introduction of 'legislation in the Provincial Council for the licensing of residential occupation in zones to be determined. The Province will establish its own Housing Board with an expert personnel, and all cases of circumlocution and delay will be cut out. Radial racial zoning must become a fundamental consideration in all town planning.'⁷⁰ The inclusion of racial zones and the establishment of a Housing Board constituted a bizarre extension to the Pretoria Agreement to which the N.I.C. objected. The N.I.C. requested Senator Clarkson to repudiate the Administrator's interpretation and to warn him that he was 'jettisoning the Agreement by assuming powers which are not contained in

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69. Heaton-Nicholls upon his appointment as Administrator of Natal had enunciated his cardinal principle to be the 'entrenchment of Natal's local government institutions - both provincial and municipal...' The Natal Mercury, 26.1.1943; see also, Wilks, The Biography of Douglas Mitchell, 32, for Mitchell's opinion of Heaton-Nicholls as a 'despot'.
70. Memo on the Subject of the Proposed Amendment to Section 11 of the Housing Act, 25.5.1944. para. 5, 1; see also above, Chapter Four, 156.

the text of the Agreement.' ⁷¹ Furthermore, when the Draft Occupation Control Ordinance to replace the 'Pegging Act' had been prepared Heaton-Nicholls declined to accede to the request of the N.I.C. for a copy stating: '...it will appear in the gazette next week and you will then see what it is all about.' ⁷² A copy was eventually handed over to the N.I.C. when he was forcefully reminded that consultation with the N.I.C. in drawing up the legislation was the mainstay of the Agreement.

The N.I.C. found that this Draft Occupation Control Ordinance was repugnant to the terms concluded with Smuts in Pretoria. ⁷³ An appeal was made to Hofmeyr, as Acting Prime Minister, to rectify the situation which was critical for the N.I.C. ⁷⁴ The N.I.C. expressed mounting disquiet over a proposed A.S.C. Conference scheduled for 6 May 1944. It was feared that the bona fides of the parties to the Agreement would be seriously brought into question if the terms of the Draft Ordinance as drawn up by the Administrator and his Executive were allowed to stand. ⁷⁵

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71. A410/B.2.7 (File 1) (Ballinger Papers), Kajee - Clarkson, 1.5.1944. Note: Heaton-Nicholls was proving intransigent. In an interview with S.R.Naidoo, an official of the N.I.C. and a member of the deputation to Pretoria, he denied having any knowledge of the terms of the Agreement. See, A410/B.2.7 (File 1) (Ballinger Papers), Kajee - Hofmeyr, 3.5.1944.
72. K.C.M. 3673(a) (G.Heaton-Nicholls Papers), Interview with Heaton-Nicholls, 5.
73. A410/B.2.7 (File 1) (Ballinger Papers), Kajee - Hofmeyr, 3.5.1944 and 6.5.1944; see also, A410/B.2.7 (File 1) (Ballinger Papers), Kajee - Clarkson, 5.5.1944.
74. A410/B.2.7 (File 1) (Ballinger Papers), Kajee - Hofmeyr, 5.5.1944.
75. Ibid. See also, A410/B.2.7 (File 1) (Ballinger Papers), Kajee - Clarkson, 8.5.1944.

Hofmeyr asked Heaton-Nicholls to withhold legislation until the Indian representatives had agreed with its provisions. Heaton-Nicholls' reaction was typical of his autocratic attitude. He declared: 'Well I thought this was unnecessary interference anyway, even from the P.M....'⁷⁶ Heaton-Nicholls had placed his own interpretation on the Agreement. He maintained that it was the prerogative of the Provincial Council to determine the spatial distribution of residential areas. But the members of the Executive Committee held a contrary view asserting that 'no provision was made for zoning in the Agreement, although this would ultimately be brought about as a result of the decisions of the board.'⁷⁷ The Executive Committee resolutely insisted on the translation of the Agreement 'strictly according to the letter'. Their argument was strengthened by the fact that the first draft of the Ordinance incorporating Heaton-Nicholls' added principles was rejected 'by the Government's legal advisers before it was even published.'⁷⁸ The second draft drawn up in consultation with the N.I.C. conformed to the fundamental provisions of the Agreement.

The confusion surrounding the Draft Occupation Control Ordinance was compounded by the ambivalent attitude of Clarkson as well. His attitude appeared to be inimical to Indian interests as he intimated to Wilks: 'You can rest assured no blooming Indian will live alongside of us, which is a dread we have always had.'⁷⁹ It is quite obvious that Clarkson was in favour of residential segregation.

76. K.C.M. 3673(a) (G.Heaton-Nicholls Papers), Interview with Heaton-Nicholls, n.d., 5.

77. Wilks, The Biography of Douglas Mitchell, 39.

78. Ibid., 39.

79. E.C.Wilks Papers, Clarkson - Wilks, 25.5.1944.

The Draft Occupation Control Ordinance⁸⁰ provided for the licensing, regulation and control of the occupation for residential purposes of dwellings by persons of certain racial groups in boroughs and townships. It was to be introduced at the Provincial Council session on 19 June 1944. It immediately came under heavy flak from the Durban City Council and hawkish White opinion in Durban. The D.C.C. wanted the introduction of the Draft Ordinance to be deferred until the Natal Indian Judicial Commission had reported. It sought an urgent interview with the Administrator and his Executive requesting also the presence of the Minister of the Interior at that meeting. The D.C.C. intended to convene a meeting of Durban Senators and Members of Parliament, Durban members of the Provincial Council and Cabinet Ministers to discuss matters relevant to the proposed Ordinance.⁸¹

The Council's request to defer the introduction of the Draft Ordinance was not acceded to.⁸² The D.C.C. contended that the Draft Ordinance was merely to cater for the needs of a small wealthy group of Indians requiring investment. With typical tongue-in-cheek attitude it asked that there should be no departure from the 'statesmanship of the

80. Pietermaritzburg, Natal Provincial Council, Official Gazette Extraordinary, (Provincial Notice No.190, 1944), (2.6.1944), (1934), 349-359.

Authority was received from the Minister of the Interior for the promulgation of the Ordinance in terms of Section 85 (xii) of the South Africa Act of 1909 in a Minute. See N.A., Vol.71, File 527(13) (D.C.C., T.C.O.), Memorandum of Legal Adviser to Town Clerk, Durban: re Select Committee on Draft Occupation Control Ordinance, 1944, 22.7.1944, Annexure B, Copy of Telegram from Minister of Interior - Senator D.G. Shepstone, 12.5.1944.

81. Minutes of the Durban City Council, 1.6.1944, 469-470; see also, N.A., Vol.71, File 527(12) (D.C.C., T.C.O.), The Town Clerk, Durban - The Provincial Secretary, 2.6.1944.

82. N.A., Vol.71, File 527(12) (D.C.C., T.C.O.), The Town Clerk, Durban - Senators, M.P.'s, M.P.C.'s, 9.6.1944, 3; see also, The Natal Mercury, 7.6.1944.

general scheme agreed upon in 1943' and to deal with the matter in 'an atmosphere of calm objectivity, divorced as far as possible from popular prejudices and racial antagonisms.'⁸³ This seemed a commendable statement coming from the D.C.C. but somewhat difficult to reconcile with its chief complaint that 'the regulation and control of the occupation only of property, and the removal of all control over the acquisition of property in this Province by Asiatics from Europeans and vice versa, is in all the circumstances a very unsatisfactory way of dealing with the matter and is inimical to the best interests of this City and of this country as a whole.'⁸⁴ Such a comment is far from objective and reeks of 'popular prejudice' and 'racial antagonism'.

The Durban City Council was aided and abetted in its opposition to the Draft Occupation Control Ordinance by the N.M.A. It was representative of the various municipalities and town councils throughout Natal. Its vociferous clamour against the Ordinance was more rapid in its tempo, more wide-ranging in its scope and more comprehensive in its involvement than hitherto. Like the D.C.C. it wanted legislation to

83. N.A., Vol. 71, File 527(12) (D.C.C., T.C.O.), Occupation Control Ordinance, Notes for Meeting with Administrator, n.d., para. 11-12, 2.

84. N.A., Vol. 71, File 527(11) (D.C.C., T.C.O.), Petition of the City Council of the City of Durban to the Honourable The Chairman and Members of the Provincial Council of the Province of Natal, in Re Occupation Control Ordinance, 16.6.1944, 3; see also, N.A., Vol. 71, File 527(12) (D.C.C., T.C.O.), The Town Clerk's Memorandum for General Purposes Committee: Proposed Ordinance to Replace the Pegging Act, 19.5.1944, para. 4, 1.

control both acquisition and occupation of residential and other property.⁸⁵ The Association elaborated this point fully in a memorandum submitted by its ad hoc Sub-Committee to the Administrator-in-Executive-Committee.⁸⁶ The arguments were characterised by a good deal of subjective reasoning and unproductive tedium in diagnosing the shortcomings of the Draft Ordinance and in offering a prognosis to make it acceptable. A suggestion to hold a round table conference with the Administrator was rejected because the Draft Ordinance was going to be referred to a Select Committee.⁸⁷

The N.M.A. addressed an urgent appeal to each member of the Provincial Council stating: 'The Draft Ordinance, as gazetted, is utterly impracticable of acceptance as the substitute of the present Pegging legislation...'⁸⁸ The Association warned that the enactment of the legislation would 'arouse bitter antagonism' and cause 'formidable racial strife, between the European and the Indian.' In the meantime

85. N.A., Vol. 37, File 174(13) (D.C.C., T.C.O.), N.M.A., Preliminary Notice of "July" Quarterly Meeting, 22.5.1944, Annexure, N.M.A. - Provincial Secretary, 22.5.1944. For a further copy of the correspondence see, E.C. Wilks Papers.

86. N.A., Vol. 71, File 527(11) (D.C.C., T.C.O.), Memorandum Upon the Draft Ordinance to Replace the Pegging Act submitted by the Ad Hoc Sub-Committee of the Natal Municipal Association to His Honour The Administrator-in-Executive-Committee, 22.5.1944, 1-6; see also, E.C. Wilks Papers, for a further copy of the Memorandum.

87. E.C. Wilks Papers, Provincial Secretary - N.M.A., 29.5.1944.

88. E.C. Wilks Papers, N.M.A., Urgent Appeal addressed to each member of the Provincial Council on the Subject of the Proposed Occupation Control Ordinance 1944, 12.6.1944; for a further copy see, K.C.M. 30562 (A.M.C. Maytom Papers).

meantime Smuts had been apprised by Lord Wavell of the situation in Durban from reports submitted to him by Sir Shafa'at Ahmad Khan.⁸⁹ Wavell had been among the first to be informed of the Pretoria Agreement⁹⁰ which had provided Smuts with an alternative to the 'Pegging Act' to forestall his critics abroad. This deteriorating situation must have proved extremely embarrassing for Smuts. In a laconic comment to Hofmeyr and Clarkson concerning the implementation of the terms of the Pretoria Agreement Smuts revealed his apprehensiveness: 'I trust you are both attending to this matter and that I may be given material for a favourable reply to Wavell.'⁹¹

But the position in Durban was far from favourable and agitation against the implementation of the Agreement was considerable.⁹² Smuts appealed through Mitchell to United Party supporters to ensure that the Ordinance should pass before being referred to a Select Committee. He pleaded:

'Compromise is of greatest importance from every point of view and its delay or failure will have serious effects and not least in Durban...I feel sure my friends will not allow compromise to be delayed or jeopardised.'⁹³

89. A1, Vol. 157, No. 83 (Smuts Archives, Public Papers), Telegram: Smuts - Hofmeyr and Clarkson, 6.6.1944.

90. See above, 208, f/n. 48.

91. Telegram: Smuts - Hofmeyr and Clarkson, 6.6.1944.

92. A1, Vol. 157, No. 90 (Smuts Archives, Public Papers), Typex: Hofmeyr - Smuts, 12.6.1944.

93. A1, Vol. 157, No. 98 (Smuts Archives, Public Papers), Smuts - Hofmeyr, 14.6.1944. Hofmeyr sent a copy of this communication to Col. Stallard, Leader of the Dominion Party, for his information. See, A1, Vol. 262, No. 201 (Smuts Archives, Private Papers), Hofmeyr - Stallard, 16.6.1944; also, A1/Aa (Hofmeyr Papers), Hofmeyr - Stallard, 16.6.1944. Hofmeyr also informed Smuts that he had appealed to U.P. members in the Provincial Council through Mitchell and used the Prime Minister's name in enlisting Madeley's help with the Labour Party; see, A1, Vol. 157, No. 101 (Smuts Archives, Public Papers), Hofmeyr - Smuts, 14.6.1944. See also below, Chapter Seven, 273, for Madeley's attitude towards Indians. See also, White 'The Evolution of Policy, 1943-1944', 93-94.

The European public in Durban however was not to be placated by Smuts's sweet persuasion. In fact he was thoroughly repudiated. The D.C.C. sponsored a mass meeting to protest against the promulgation of the Draft Ordinance.⁹⁴ It goes without saying that the action of the D.C.C. was partisan to its White ratepayers. The meeting was convened to represent European consensus against the Indian community.

Douglas Mitchell, as one of the speakers, attempted 'to explain some of the knotty points in connection with the preparation of [the] draft Ordinance and to permit [the meeting] to see the position from the eyes of the Provincial Government of Natal,...'⁹⁵ When Mitchell began to read out the message sent to him by Smuts the seething, turbulent audience exploded into disorder and abuse.⁹⁶ He was led away by the Police Commandant for Durban because of the imminent outbreak of violence. Smuts was bitterly criticised 'for having taken a step publicly avowed and designed to conciliate Indian opinion.'⁹⁷ It was commented that such a rebuke in public of a politician of the status of General Smuts was the first of its kind.⁹⁸ Other speakers at the meeting such as J.R.Sullivan, M.P., and Councillor L.L.Boyd in demagogue

94. The Natal Daily News, 16.6.1944.

95. N.A., Vol.71, File 527(12) (D.C.C., T.C.O.), Report of Address by Mr. D.E.Mitchell M.E.C. at a Meeting of protest held at the City Hall on Friday, 16th June 1944, under the Chairmanship of His Worship the Mayor against the passing of the proposed Occupation Draft Ordinance, 1.

96. See, Mitchell's account as narrated in Wilks, The Biography of Douglas Mitchell, 39-40; also, N.A., Vol.71, File 527(12) (D.C.C., T.C.O.), Report of Address by Mr. D.E.Mitchell, 16.6.1944, 5-8; The Natal Daily News, 17.6.1944; The Natal Mercury, 17.6.1944.

97. Indian Views, 23.6.1944, 2.

98. Ibid.

fashion hurled invective against the Government and the Ordinance, to make the whole meeting an unpleasant event.⁹⁹ White response to the Ordinance seemed to indicate a possible disintegration of the United Party in Natal. Further the rebellious mood of the Dominion and Labour Parties threatened to break up the coalition.

On 19 June 1944 prior to the crucial sitting of the Provincial Council to discuss the Draft Ordinance, each councillor received a telegram from the Durban Joint Wards Committee. It prophesised in its characteristically maledictory manner the consequences of voting for the measure: 'Natal will bitterly resent and regret today's [sic] work if national interests are outweighed by party political considerations.'¹⁰⁰ Mitchell attempted to resolve the situation in an unconventional manner. He told the caucus that he intended referring the Draft Ordinance to a Select Committee before the Second Reading and not, as customarily done, after that stage.¹⁰¹ This strategy allowed for principles of the legislation to be changed which could not be effected if the Second Reading of the measure had been passed by the House.

99. See, The Natal Daily News, 17.6.1944 and The Natal Mercury, 17.6.1944 for excerpts of their speeches.

Note: In a letter to Hofmeyr, Mitchell expressed his compunction that it was 'tragic' that public opinion was 'inflamed and agitated almost to emotional hysteria'. He referred to Sullivan's comments. See, A1, Vol. 263, No. 76 (Smuts Archives, Private Papers), Mitchell - Hofmeyr, 23.6.1944.

100. E.C. Wilks Papers, Telegram: Durban Joint Wards Committee - E.C. Wilks, 19.6.1944.

101. Wilks, The Biography of Douglas Mitchell, 41. The D.C.C. had made such a plea in its petition to the Council, failing which it asked that the Council be heard at the Bar of the House. Minutes of the Durban City Council, 23.6.1944, 523-524.

The sigh of relief was almost palpable. He received enthusiastic support for this move. He intimated this to Heaton-Nicholls just before the Administrator entered the Chamber to introduce the Second Reading of the Ordinance. Mitchell advised that if the caucus decision to refer the Ordinance to a Select Committee before the Second Reading was not implemented, the Ordinance would be rejected.¹⁰² Heaton-Nicholls considered three options open to him. If he allowed the Council to decide and if it was rejected it would be tantamount to the Province's rejection of an agreement arrived at by the Prime Minister and the Administrator and his Executive with the Indian community and which had been communicated with the Viceroy of India. He could withdraw the Ordinance altogether. He could agree to the proposal of the caucus. He decided on the last option.

Mitchell had read the mood of the caucus aright. He explained later to Hofmeyr that some United Party Councillors would have voted for the Second Reading before referral to a Select Committee out of loyalty to Smuts.¹⁰³ But they would have resigned their seats subsequently and the by-elections would have been disastrous for the Party.

On 20 June 1944 Heaton-Nicholls delivered his speech in moving the discharge of the Order for the Second Reading of the Occupation Control Draft Ordinance (No.20, 1944) and its reference to a Select Committee with tedious rhetoric. He reviewed the events that led to the introduction of the Ordinance. He asserted that as the cultural differences between the Europeans and Indians were such that they 'remain...unassimilated and unassimilable with Europeans' the measure was

102. K.C.M. 3673(a) (G.Heaton-Nicholls Papers), Interview with Heaton-Nicholls, n.d., 5.

103. A1, Vol.263, No.76 (Smuts Archives, Private Papers), Mitchell - Hofmeyr, 23.6.1944. As a matter of fact 3 of the 14 U.P. Members refused to even vote for the First Reading unless an assurance was given that the Draft Ordinance would then go to a Select Committee before the Second Reading.

directed towards the 'control of occupation of dwelling places in order to bring about a separation in residence' between the two groups.¹⁰⁴ In his speech the reproof to the Union Government for having passed the temporary 'Pegging Act' and thereby forestalling the Provincial Executive Committee's town-planning scheme which would have effected permanent legislation was obvious as was the Administrator's pique at being deprived of the prerogative of such Provincial legislation. He expressed pleasure at being once more empowered to deal with legislation which he considered to be strictly within the ambit of the Province. To his credit, he rejected the opinion 'that Indians will buy up the whole of Durban' and as a result political control will ultimately pass into the hands of Indians and the existence of Europeans in Natal will be threatened.¹⁰⁵ He conceived danger only in residential juxtaposition of Whites and Indians and not the acquisition of property by Indians. The Draft Ordinance thereafter was referred to a Select Committee¹⁰⁶ which had to report by 22 August 1944.

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104. Pietermaritzburg, Natal Provincial Council, Administrator's Speech on the Draft Occupation Control Ordinance, (P.C.3, 1944), 20.6.1944. For further copies of the speech see, N.A., Vol. 71, File 527(13)(D.C.C., T.C.O.); K.C.M. 3595 (G. Heaton-Nicholls Papers); K.C.M. 30559 (A.M.C. Maytom Papers).
105. Administrator's Speech on the Draft Occupation Control Ordinance, (P.C.3, 1944), 20.6.1944; see also, The Natal Mercury, 21.6.1944.
106. The Select Committee comprised : D.E. Mitchell (Chairman, U.P.); Major Lewis Byron (U.P.); E.J.V. Grantham (U.P.); E.R. Browne (Labour); J.A. Lidgett (Dominion). A1, Vol. 263, No. 76 (Smuts Archives, Private Papers), Mitchell - Hofmeyr, 23.6.1944; see also, Indian Opinion, 23.6.1944, 188.

There was immediate reaction from the N.I.C. They repudiated the Administrator's claim that the Pretoria Agreement authorised him to confine the Indian question in Natal solely to the Provincial level.¹⁰⁷ The N.I.C. objected to the Administrator's interpretation of the functions of the Licensing Board as a 'final solution' to the 'racial intermingling of Europeans and Indians in the towns of Natal' and that the 'principle of the measure' was to control occupation of residences to effect 'a separation of races'. The N.I.C. reiterated that the purpose and function of the Licensing Board was purely and simply to regulate residential occupation. This meant that control would be extended over individuals and not communities. The Administrator's interpretation implied that the Indian community accepted 'zonal segregation' which was contrary to the fundamental principles of the Pretoria Agreement.

The N.I.C. deprecated the unusual procedure of referring the Ordinance to a Select Committee after the First Reading. They were concerned that the Ordinance would emerge from the Select Committee

107. C.I.A.40, File M897, Vol.1 (Commissioner of Immigration and Asiatic Affairs), N.I.C. - Hofmeyr, 23.6.1944, 2.

The N.I.C. had enunciated their stand clearly:

'Above all, in our willingness to meet an immediate situation, we do not surrender the principle that any solution of the Indian question must rest in negotiations between the Union Government and the Indian Community. The assurance and protection given to us by the South Africa Act shall remain constant.'

Memorandum submitted by the N.I.C...to Smuts..., 18.4.1944, para. 10, 3.

'altered in principle and substance' in relation to the Pretoria Agreement.¹⁰⁸ As later developments showed the N.I.C. had assessed the turn of events correctly. The Select Committee announced that it would commence its task on 17 July 1944 at Pietermaritzburg. It called for evidence in connection with the Draft Ordinance from interested persons and organisations.¹⁰⁹

In its memorandum to the Select Committee the D.C.C. stated that it did not consider the Draft Ordinance as an acceptable solution of the problem; nor did it regard the legislation as permanent and final.¹¹⁰ It called emphatically for an amendment of the Ordinance to include acquisition of property of all kinds and the occupation of both residential and non-residential property. This amendment was the very antithesis of the spirit and letter of the Pretoria Agreement. The D.C.C. added that should the amendments proposed be rejected by the Select Committee then the promulgation of the Ordinance should be postponed until the reports of the Natal Indian Judicial Commission and

108. C.I.A.40, File M897, Vol.1 (Commissioner of Immigration and Asiatic Affairs), N.I.C. - Hofmeyr, 23.6.1944, 4.

The N.I.C. also informed Smuts of their trepidation in this connection, see, A1, Vol.157, No.122 (Smuts Archives, Public Papers), N.I.C. - Smuts, 4.7.1944; see also, C.I.A.40, File M897, Vol.1 (Commissioner of Immigration and Asiatic Affairs), N.I.C. - J.H. Basson, 10.7.1944, 2.

109. N.A., Vol.71, File 527(12) (D.C.C., T.C.O.), Memorandum for Special Committee re Indian Affairs: Draft Occupation Control Ordinance, 1944, 23.6.1944; see also, The Leader, 15.7.1944, 5.

110. Minutes of the Durban City Council, 7.7.1944, Memorandum by the Durban City Council submitted to the Select Committee on the Occupation Control Ordinance, 1944, para. 6, 565.

the Natal Provincial Post-War Works and Reconstruction Commission were made available. The D.C.C. believed that these Commissions would vindicate its point of view. The N.I.C., too, submitted a lengthy memorandum.¹¹¹ It reviewed the events leading up to the Pretoria Agreement and suggested amendments to clauses of the Ordinance which were repugnant to the Agreement. Its objections were a repetition of those made to Smuts and Hofmeyr previously. The N.M.A. echoed the sentiments expressed by the D.C.C. It went further to proclaim that the Ordinance would compound the difficulties and betray the European community since it considered the Ordinance as being meagre and incomplete.¹¹² The Association deemed it essential that it should be represented on the Licensing Board and propounded the idea that a single Board for the whole of Natal should be established in lieu of separate ones for each local authority.

When Smuts returned to South Africa the atmosphere was charged with tension. The rabid racialism in Durban led to incessant demands being made by various people: the Durban General Council of the United Party insisted on control of acquisition;¹¹³ the Dominion Party supported the D.C.C. in its injunctions against the Ordinance, but went further to seek

111. I.A.P., Memorandum submitted on behalf of the N.I.C. to the Select Committee of the Provincial Council on the Subject of the Draft Ordinance for the Licensing Regulation and Control of the Occupation of Dwellings by Persons or [sic] Certain Racial Groups in Borough and Townships, 17.7.1944. For further copies of the Memorandum see, UNISA, Accession 105, 7.3.10.

112. Indian Views, 21.7.1944, 5; see also, N.A., Vol. 37, File 174(14) (D.C.C., T.C.O.), N.M.A., Record of Proceedings at the June Quarterly Meeting of the Executive Committee, held at Pietermaritzburg on 30.6.1944, 7-9; see also, The Natal Daily News, 27.6.1944.

113. The Natal Daily News, 5.7.1944.

control of purchase and occupation of property throughout Natal as well as maintaining that the appointees on the Licensing Board should be Whites only. ¹¹⁴

But what was surely extremely mortifying for Smuts was the appeal made by the Durban Joint Wards Committee to C.R.Swart, leader of the Nationalist Party in the Free State ¹¹⁵ to assist them in opposing the Government on this issue. In a scathing editorial, The Natal Daily News condemned the action of the Durban Joint Wards Committee as toenadering and that 'nothing,...could be more repugnant to Natal's traditions than in the midst of a local controversy to run whimpering to the political enemy.' ¹¹⁶

The appeal made to the Nationalist Party by the English-speaking Whites in Durban showed how strongly they felt about the Indian issue.

Ratepayers and Burgesses Associations collaborated to form an action committee. They seemed to orientate their activities towards further humiliation of Smuts. They distributed propaganda leaflets warning the electors of Natal of dire consequences if the Draft Occupation Control Ordinance was passed. ¹¹⁷ The worsening situation demanded immediate

114. A1, Vol. 157, No. 130 (Smuts Archives, Public Papers), Dominion Party - Smuts, 13.7.1944.

115. Indian Views, 14.7.1944, 2.

116. The Natal Daily News, Editorial, 10.7.1944.

117. I.A.P., 'To the Electors of Natal. If the Occupation Control Ordinance is passed....' (Durban, Action Committee of the combined Ratepayers and Burgesses Association, 8.8.1944); see also, The Natal Daily News, 15.8.1944.

and drastic action. Smuts agreed to meet a deputation of Dominion Party Senators, Members of Parliament and Members of the Provincial Council on 29 July 1944.¹¹⁸ He also arranged to meet deputations from the D.C.C. and certain European organisations as well as the N.I.C. on 31 July 1944.¹¹⁹

The D.C.C. presented a detailed memorandum to Smuts. Inter alia, it rejected the Draft Ordinance out of hand as a solution to the question of residential juxtaposition of Europeans and Indians in Durban.¹²⁰ The Council, supported by the other organisations present, contended that the N.I.C. was concerned about the interests of a small minority of Indians. Similarly a small minority of Europeans was involved in selling to the Indian purchasers.¹²¹ Perhaps this point indicates the whole irony of the 'Indian penetration' issue. Legislation was demanded to control the minority rather than for the interest and welfare of the majority. It highlighted the paradoxical situation obtaining in Durban.

118. Indian Views, 28.7.1944, 1.

119. N.A., Vol. 71, File 527(12) (D.C.C., T.C.O.), Telegram: Minister of the Interior - Mayor of Durban, 25.7.1944.

The Deputations were from: the D.C.C., Natal Chamber of Industries, the Durban Chamber of Commerce and the N.M.A.

Indian Opinion, 11.8.1944, 245; see also, The Natal Daily News, 31.7.1944. Smuts met the N.I.C. separately. A1, Vol. 157, No. 148 (Smuts Archives, Public Papers), Telegram: Cooper - Kajee, 25.7.1944.

120. N.A., Vol. 71, File 527(12) (D.C.C., T.C.O.), Memorandum submitted to the Right Honourable the Prime Minister by His Worship the Mayor of Durban, on behalf of the Durban City Council, in re Draft Occupation Control Ordinance 1944 (Natal), 31.7.1944, para. 1, 1.

121. Ibid., para. 9 and 10, 3-4.

Smuts pointed out to the European deputation that his involvement with the Indian question extended over a considerable period of time. Yet this was the first occasion that 'Indians had agreed to accept any restriction on occupation.'¹²² He appealed to the deputation to settle the question of occupation and 'foreclose' the Indian by his own agreement regarding ownership. In short, Smuts was confident that in terms of the Pretoria Agreement Indians would not occupy property acquired for investment purposes. Smuts made it quite plain that the Pretoria Agreement had to be implemented.¹²³

One would have expected that Smuts's sagacity, logic of argument and power of rhetoric, but above all, his international standing as a warleader, would have prevailed over the parochialism and bigotry of White attitudes in Durban. It was generally hoped, especially by the Indian community, that after Smuts's visit to Durban the Draft Occupation Control Ordinance would be promulgated and the 'Pegging Act' repealed.¹²⁴ But there was no abatement of the hectoring and ranting by anti-Indian agitators against the Draft Ordinance. 'Europeans were adamant in their repudiation of a proposal having as its object the restoration of rights to Indians.'¹²⁵

122. N.A., Vol. 71, File 527(12) (D.C.C., T.C.O.), Transcript of Shorthand Note, Interview with General Smuts, 31.7.1944, para. 1; see also, N.A., Vol. 71, File 527(13) (D.C.C., T.C.O.), Memorandum for General Purposes Committee, Interview with Prime Minister re Draft Occupation Control Ordinance, 14.8.1944, 1-2; N.A., Vol. 71, File 527(13) (D.C.C., T.C.O.), N.M.A., Résumé of the Proceedings at the Interview at Durban with the Right Honourable the Prime Minister on the Occupation Control Ordinance to replace the Pegging Act, 31.7.1944, 1-2.

123. The Leader, 5.8.1944, 4.

124. The Leader, Editorial, 26.8.1944, 4.

125. Calpin, Indians in South Africa, 197; see also, E.C. Wilks Papers, N.M.A. - Wilks, 26.9.1944.

The Select Committee was to have reported on 22 August 1944¹²⁶ but was granted an extension of time and after sixteen meetings presented its report on 17 October 1944¹²⁷ in the form of a Draft Ordinance entitled the Residential Property Regulation Ordinance, 1944.¹²⁸ The Select Committee had completely altered the Draft Occupation Control Ordinance as the N.I.C. had fearfully predicted.¹²⁹

Both the D.C.C. and the N.M.A. welcomed the Draft Residential Property Regulation Ordinance with certain reservations which did not affect the principles of the legislation. Douglas Mitchell was so pleased with the Draft Ordinance that not only did he regard it as 'a milestone in the progress of Natal towards racial harmony' but he recommended it as 'a lead which the other Provinces of the Union might well follow.'¹³⁰ The Natal Mercury, too, with unbelievable temerity advised the Indian community that it 'cannot be blind to the storm that the proposal of unrestricted acquisition created, and they would be more than foolish if they did not accept the proposals of the Select Committee,...'¹³¹

126. See above, 223.

127. Interim Report (UG 22/1945, 16.3.45), para. 29, 7; see also, The Natal Daily News, 18.10.1944; The Natal Mercury, 18.10.1944.

128. Pietermaritzburg, Natal Provincial Council, Draft Residential Property Regulation Ordinance (as brought up by Select Committee), (No.20, 1944). For a further copy of this Draft Ordinance see, N.A., Vol.71, File 527(13) (D.C.C., T.C.O.), Memorandum for Council-in-Committee, 25.10.1944, Annexure.

129. Briefly the Ordinance was divided into four chapters. Chapter I dealt with the establishment of Licensing Boards; their composition and function and, was more or less in conformity with the Pretoria Agreement. Chapter II empowered the Administrator by proclamation to give force of Law to agreements entered into by racial groups concerning occupation and acquisition of immovable property. Chapter III controlled the agreements between Europeans and Asiatics for the acquisition or long-lease of residential property. Chapter IV dealt with penalties, regulations and title.

130. The Natal Daily News, 18.10.1944.

131. The Natal Mercury, 18.10.1944.

But the Indian community was acutely disappointed with the outcome. The Draft Residential Property Regulation Ordinance was seen as a violation and a total repudiation of the Pretoria Agreement.¹³² It was unacceptable to 'even the most docile and most compromising Indian.'¹³³ At a fully representative committee meeting held on 22 October 1944 the N.I.C. unanimously rejected the Draft Ordinance, because it was 'in direct conflict with...[and] a departure from the Pretoria Agreement.'¹³⁴ The N.I.C. outlined its objections to the Ordinance as follows: the control of residential occupation and not ownership of property was the fundamental principle agreed upon at Pretoria. The control of occupation and acquisition of residential property being extended to all Boroughs and townships in Natal was additional to the Agreement and exceeded even the terms of the 'Pegging Act' which was confined to Durban. Legalising voluntary agreements was extraneous to the Pretoria Agreement. The Ordinance ignored factors of contiguity and natural expansion. The composition of the Boards also violated the spirit and letter of the Pretoria Agreement. Originally the

132. Indian Views, Editorial, 27.10.1944, 2.

133. The Leader, Editorial, 28.10.1944, 4; see also, Interim Report (UG 22/1945, 16.3. 45), para. 31, 7, where the Commissioners stated: 'It is quite obvious that this Ordinance goes far beyond the terms of the Pretoria Agreement.'

134. A1/Dg(Hofmeyr Papers), N.I.C. - Hofmeyr, 28.10.1944, Annexure, N.I.C. Resolution on Residential Property Regulation Draft Ordinance, 1.

Administrator was to nominate the appointees to the Board. The Ordinance provided for Europeans to be nominated by local authorities. The Boards were also obliged to take into account the schemes or proposals, of the respective local authorities, related to town-planning.¹³⁵

The N.I.C. also expressed trepidation that instead of a single ordinance as originally intended a tapestry of ordinances complementary to the Draft Residential Property Regulation Ordinance were being promulgated. These were: The Natal Housing Board Ordinance, The Provincial and Local Authorities Expropriation Ordinance and the proposed Town-Planning Ordinance based on the Ninth Report of the Natal Provincial Post-War Works and Reconstruction Commission visualising an Urban Areas Planning Commission.¹³⁶ The N.I.C. complained that the Ordinances were designed to effect a policy of racial zoning and they had not been consulted on any of these measures.

They wanted the Draft Residential Property Regulation Ordinance to be withheld from being passed, or, alternatively, they asked for the privilege of 'the rare democratic procedure' of pleading their case at the Bar of the Provincial Council Chamber.¹³⁷ The Council unanimously agreed to accede to the N.I.C.'s latter request.

135. Ibid., 2. These views were fully expounded in a petition submitted to the Provincial Council, see, A1/Dg(Hofmeyr Papers), The Petition of the undersigned James Walter Godfrey (President) Abdulla Ismail Kajee (Chairman of Committee) Poonoosamy Ruthnam Pather and Aboobaker Moosa(Jt.Hon.Secretaries) of the N.I.C. to the Honourable the Chairman and Members of the Provincial Council of Natal, in Council Assembled, 28.10.1944, 1-10.

136. Ibid., para. 18, 9.

137. Ibid., para. 21, 10; see also, The Natal Mercury, 31.10.1944.

History was made when A.I.Kajee presented the cause of the Indian community at the Bar of the Natal Provincial Council on 30 October 1944.¹³⁸ In an eloquent and forceful address he analysed the Draft Ordinance showing clearly how it differed from the Pretoria Agreement.¹³⁹ The fundamental premise of Kajee's argument was that 'the Union Government instructed the Provincial Administration by Cabinet Minute to introduce legislation for the specific and only purpose of interpreting the Pretoria Agreement and setting up machinery to control individual cases of residential occupation.'¹⁴⁰ He argued that the Ordinance exceeded the delegation of authority granted to the Provincial Council by the Minister in his Cabinet Minute¹⁴¹ by introducing measures not contemplated by the Pretoria Agreement. Not only was the Ordinance a violation of the Agreement but it had also placed 'the Indians in worse plight than even the Pegging Act succeeded in doing.'¹⁴²

Kajee made the pertinent point that if the Draft Occupation Control Ordinance had been passed, it would have been the first time that the Indian community had been afforded the opportunity to have participated

138. The Forum, (4.11.1944), (7), (32), 21.

139. Minute and Agenda Book, S.A.I.C., 8-10.2.1946, Mr. A.I. Kajee's Speech at the Bar of the Natal Provincial Council, 30.10.1944. For a further copy of this speech see, E.C. Wilks Papers.

140. Kajee's Speech, 3.

141. See above, 216, f/n.80, for Minute from Minister of the Interior.

142. Kajee's Speech, 4.

in framing legislation involving their welfare. He regretted that European opinion had failed to evaluate the merits and spirit of co-operation. What rankled was the hypocrisy that 'serious and sympathetic consideration' should be given to the plea by Indians to be heard at the Bar of the House. But at the same time it was stipulated that as the 'ordinance in its new form has received a wide measure of European support' effort should be made 'to rest it also on some broad agreement with the Indian community'; but, there should not 'be any attempt to alter it in principle nor would it be advisable to give scope for fresh controversy to arise by unwise delay.'¹⁴³ Kajee made a fervent appeal that such a spirit should not permeate the Provincial Council otherwise 'the constitutional right to appear before you in this manner is indeed a mockery.'¹⁴⁴ Kajee's plea availed the Indian community nothing.

In his reply Heaton-Nicholls made a travesty of Kajee's pleadings at the Bar of the Provincial Council. His predilection for 'home-rule' policy for Natal was made abundantly clear.¹⁴⁵ He defiantly declared that the Provincial Council was a sovereign body.¹⁴⁶ He went further to state that only the Union Government, and not even the Prime Minister, could instruct the Provincial Council as to what it should do. It seemed as though the Draft Residential Property Regulation Ordinance provided Heaton-Nicholls with the opportunity to ride his hobby-horse into battle against the Union Government and Smuts. He doggedly maintained

143. The Natal Daily News, Editorial, 28.10.1944.

144. Kajee's Speech, 5.

145. The Forum, (11.11.1944), (7), (33), 17.

146. Indian Opinion, 3.11.1944, 228.

that 'there is no part of the Ordinance which is not implicit in the Pretoria Agreement,...' ¹⁴⁷ Immediately thereafter he submitted the Ordinance to the Council for its Second Reading. It was passed unanimously. It passed its Third Reading on 2 November 1944 with two dissentients, namely L.L.Boyd and S.M. Pettersen ¹⁴⁸ both of whom were Durban City Councillors and virulently anti-Indian. The other related ordinances were also passed. ¹⁴⁹

The N.I.C. reacted to the Administrator's speech by addressing a strongly worded letter to him. ¹⁵⁰ They protested at his evasion of the facts; his claim that he was ignorant of the N.I.C. memorandum constituting the Pretoria Agreement; the question of acquisition of property; and, denial of the Minute from the Cabinet. ¹⁵¹ They also challenged the Administrator's claim to confine the Indian question within the sole jurisdiction of the Natal Provincial Council, for they contended that in terms of Section 147 of the South Africa Act, the Governor-General-in-Council was the final arbiter on matters affecting the Indian community. The N.I.C. concluded:

147. Ibid. In this connection Senator E. H. Brookes informed Hofmeyr that Senator D.G. Shepstone 'is particularly angry with Heaton-Nicholls (whose appointment he regards as a most unfortunate one) and others for insisting in the face of facts that this Ordinance corresponds with the Pretoria Agreement.'

A1/Aa(Hofmeyr Papers), Brookes - Hofmeyr, 2.11.1944.

148. The Natal Mercury, 3.11.1944.

149. See above, 232, f/n.136; see also, The Natal Mercury, 3.11.1944; Race Relations News(Dec.1944), (V1), (12), 89.

150. A1/Dg(Hofmeyr Papers), N.I.C. - Administrator, 31.10.1944.

151. See, The Natal Mercury, 1.11.1944, where Heaton-Nicholls in reply to a question concerning the Minute declared: 'No such minute ever came. No such minute was necessary. No such minute could have come, because it would have been completely unconstitutional.'

See above, 216, f/n.80, for the Minute in question.

'We take the strongest exception to your interpretation of the Pretoria negotiations and record our protest, in the only way available to us, that the Residential Property Regulation Draft Ordinance is a contradiction of an Agreement reached on April 18th, 1944 and that your speech in its support destroy[sic] in large measure the confidence of the Indian community in your sense of justice and fairplay.' 152

The Government of India reacted sharply to the passing of the Residential Property Regulation Ordinance as a violation of the Pretoria Agreement, to which it had given its moral support.¹⁵³ Earlier the Government of India had made it clear that should the Draft Occupation Control Ordinance be rejected by the Provincial Council the Agreement should be implemented by legislation enacted by the Union Parliament.¹⁵⁴ When the Draft Residential Property Regulation Ordinance emerged from the Select Committee in the form that it did the Government of India tersely informed Smuts¹⁵⁵ that they viewed 'the latest developments' with 'grave concern' and contemplated 'proceeding with their plan of counter-measures.'¹⁵⁶ It was also mentioned that the Government of India was prepared to defer such action if the Pretoria Agreement was implemented by the Central Government.

152. N.I.C. - The Administrator, 31.10.1944; see also, The Natal Daily News, 1.11.1944. The N.I.C. also apprised Smuts of their disquiet over the Administrator's comments. See, A1/Dg(Hofmeyr Papers), N.I.C. - Smuts, 31.10.1944; also, A1, Vol.159, No.1 (Smuts Archives, Public Papers), Telegram: N.I.C. - Smuts, 1.11.1944.

153. The Natal Daily News, 8.11.1944.

154. A1, Vol.158, No.31 (Smuts Archives, Public Papers), Note from Indian High Commissioner, 4.10.1944.

155. A1, Vol.158, No.54 (Smuts Archives, Public Papers), Note from Indian High Commissioner, 27.10.1944.

156. See above, 204, f/n.27.

In reply Smuts curtly rejected the view expressed by the Indian Government that the Ordinance violated the spirit of the Pretoria Agreement.¹⁵⁷ This opinion of Smuts was changed later when cogent representations were made by the N.I.C. Smuts explained the impact of the Ordinance and referred to the veiled threat of the Government of India regarding counter-measures. He stated blandly that no assurances as demanded by the Government of India could be given, except that the Governor-General-in-Council would exercise the necessary care when the Ordinance came up for assent. The ray of hope surrounding the Pretoria Agreement was fading rapidly for Smuts. His arguments in defence of the Provincial Council action degenerated to the mere scoring of partisan debating points. It lacked conviction.

The Government of India applied reciprocal restrictions on nationals of South Africa in terms of Section 2 of the Reciprocity Act, 1943 on 3 November 1944.¹⁵⁸ The significance of such a move lay in the intention rather than the effect of such retaliation.¹⁵⁹ The legislature called for the imposition of economic sanctions and the recall of the High Commissioner.¹⁶⁰ India at one stage even threatened war against South Africans.¹⁶¹

157. A1, Vol. 158, No. 57 (Smuts Archives, Public Papers), Note from the Union Government to the Indian High Commissioner, 28.10.1944. For a further copy of this Note, see, A1/Dg (Hofmeyr Papers).

158. Kondapi, Indians Overseas, 1838-1949, 270; see also, The Natal Daily News, 4.11.1944.

159. The African World, 18.11.1944, 110.

160. The Forum, (11.11.1944), (7), (33), 19; see also, The Natal Daily News, 7.11.1944; The Natal Mercury, Editorial, 8.11.1944.

161. The Forum, (18.11.1944), (7), (34), 15.

In a somewhat acerbic note Smuts reminded the Government of India that the Union Government 'have not abdicated their responsibility in respect of the Indians' and deplored 'most deeply the intemperate and violent language which has just been indulged in in the debates in the Indian assembly,...' ¹⁶² Smuts seemed powerless to do anything more. That he was very worried is evident from the tenor of his confidential memorandum to the Cabinet. He wanted to keep them in touch with his actions and decisions on this rather thorny issue. ¹⁶³ Smuts tended to put into practice advice given by L.S. Amery, i.e., to 'move from one compromise to another in hope of reaching a final adjustment some day.'¹⁶⁴ The facile pledge of the Pretoria Agreement was one such compromise which had improved the status of the Union as well as of Smuts. Natal, however, had dealt him a dastardly blow.

Smuts's dilemma was complicated by Hofmeyr's courageous opposition to the Residential Property Regulation Ordinance. It would appear from a letter sent to Hofmeyr by Senator E.H.Brookes that Hofmeyr was prepared to resign over this issue. Brookes counselled against such drastic action in throwing away the chance of a Premiership on such a small issue, despite the fact that the Prime Minister's role had been 'shabby and dishonest' and that it would be 'galling to accept.'¹⁶⁵ Brookes seems to be on firm ground in questioning Smuts' probity here. He informed Hofmeyr that from a conversation with Senator D.G.Shepstone he

162. A1, Vol.159, No.11 (Smuts Archives, Public Papers), Note from Pretoria Government to Government of India, 7.11.1944.

163. A1/Dg (Hofmeyr Papers), Memorandum on Present Natal Draft Indian Ordinance (For Confidential Information of Cabinet only), n.d.

164. J. van der Poel (Ed.), Selections from the Smuts Papers, Vol.V1, 512.

165. A1/Aa (Hofmeyr Papers), Brookes - Hofmeyr, 2.11.1944, 4 and 6.

learnt that Smuts had promised Douglas Mitchell that he would see the Draft Residential Property Regulation Ordinance through and if it was found ultra vires the Provincial Council, he would introduce Union legislation in similar terms.¹⁶⁶ As a matter of fact Heaton-Nicholls had sent Mitchell to Smuts to inform him of the Ordinance. On his return, Mitchell stated that 'Smuts agrees with it entirely. Thought it was quite a wise measure.'¹⁶⁷

Hofmeyr insisted that the Ordinance was contrary to the undertaking given by Smuts when the 'Pegging Act' was passed that the legislation would be confined to Durban. Further, the extension of any restrictions imposed on acquisition of property in other areas in Natal was to be implemented only after thorough investigation by a Commission of Enquiry had been carried out.¹⁶⁸ He pointedly reminded Smuts that it had been agreed that while the 'Pegging Act' was in force Durban would be on trial and a judicial enquiry was to investigate the whole gamut of Indian grievances. Hofmeyr perceived the Ordinance as an abandonment of this commitment by Smuts. Worse still, the legislation was delegated to the Natal Provincial Council almost half of whom represented constituencies in Durban. In this connection Hofmeyr observed:

166. Ibid., 1.

167. K.C.M.3673(a) (G. Heaton-Nicholls Papers), Interview with Heaton-Nicholls, n.d., 6.

168. A1/Dg(Hofmeyr Papers), Hofmeyr - Smuts, 3.11.1944.

'I did not trust either Durban or the Natal Provincial Council (half Durban) to give the Indians a square deal. I quoted Clarkson's statement in condemnation of Durban...' 169

Hofmeyr insisted further that consultation should take place with the Indian community to reach a settlement; and, if agreement could not be reached then the Ordinance should be reserved for consideration in terms of the recommendations made by the Natal Indian Judicial Commission.¹⁷⁰ Smuts agreed to consult with the Indian community.¹⁷¹ He had few options left to save the situation.

In honouring the assurance given to Hofmeyr and in response to repeated requests for an interview by the N.I.C. Smuts agreed to meet with an Indian deputation on 28 November 1944.¹⁷² In the meantime Smuts astutely appointed G.Heaton-Nicholls as High Commissioner for South Africa in London,¹⁷³ to remove him from the Administratorship. This political stratagem was probably conceived as a convenient manoeuvre to ensure that negotiations with the Indian community would not be complicated by his presence. He was succeeded by Douglas Mitchell as the Administrator of Natal.

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169. A1/Dg(Hofmeyr Papers), Notes of Cabinet Meeting, 7.11.1944. Clarkson stated: 'The City Council's representatives are all anti-Indian.' E.C.Wilks Papers, Clarkson - Wilks, 2.2.1944, 2.
 170. A1/Dg(Hofmeyr Papers), Hofmeyr - Smuts, 3.11.1944.
 171. A1/Dg(Hofmeyr Papers), Notes of Cabinet Meeting, 7.11.1944.
 172. A1, Vol.159, No.30 (Smuts Archives, Public Papers), Telegram: Private Secretary, Prime Minister - Kajee, 23.11.1944.
 173. See, The Natal Daily News, 21.11.1944; The Natal Mercury, Editorial, 22.11.1944.

The N.I.C. presented two memoranda elucidating their grievances to the various Ordinances.¹⁷⁴ The N.I.C. maintained that the Ordinances taken in their entirety 'materially and gravely' departed from the Pretoria Agreement. They requested: that the Ordinances should be vetoed; that the Prime Minister reiterate, for the assurance of the Indian community, the principle that the Central Government would continue to deal with matters 'specifically and differentially' affecting Indians; and, that the Prime Minister should initiate steps to implement the Pretoria Agreement and deproclaim Durban from the operation of the 'Pegging Act'.¹⁷⁵

In the course of discussion, Smuts informed the N.I.C. deputation that the 'Pretoria Agreement is dead-stone dead-' and that they were 'to begin de novo as we were on the 18th April, 1944.'¹⁷⁶ Further, the 'Pegging Act' was to remain in force, unrepealed, while other avenues of settlement were explored. The Residential Property Regulation Ordinance would not be assented to as a consequence of this decision, and it would

174. These Memoranda are contained in Minute and Agenda Book, S.A.I.C., 8-10.2.1946. The first was:

Memorandum submitted by the N.I.C. as Representing the Indian Community of Natal to Field Marshal the Right Honourable J.C. Smuts, Prime Minister of the Union of South Africa, on the Residential Property Regulation Ordinance, No.20, 1944 of Natal, 28.11.1944.

The second Memorandum was:

Memorandum submitted by the N.I.C. as Representing the Indian Community of Natal to: Field Marshal the Right Honourable J.C. Smuts, Prime Minister of the Union of South Africa on the Natal Housing Board Ordinance No.23, 1944 and Provincial and Local Authorities Expropriation Ordinance No.26, 1944, 28.11.1944.

175. Memorandum submitted by the N.I.C...to...Smuts on the Residential Property Regulation Ordinance, 28.11.1944, para. 18, 5-6.

176. Minute and Agenda Book, S.A.I.C., 8-10.2.1946, Kajee - Smuts, 29.11.1944, 1; see also, A1/Dg(Hofmeyr Papers), for a further copy of this correspondence.

be reserved.¹⁷⁷ Insofar as the other Ordinances were concerned there were, from the Government point of view, valid reasons for assent at an early date. Smuts elaborated that housing presented a chronic problem in Durban. In order to accelerate the building programme the Housing and Expropriation Ordinances were vitally necessary.¹⁷⁸ Smuts concluded that with the failure of the Pretoria Agreement, settlement along some other line ought to be pursued. In the opinion of the Government it could best be achieved by the Natal Indian Judicial Commission resuming and proceeding with its labours.¹⁷⁹ Smuts also suggested the appointment of a standing committee to liaise with the Administrator, the Minister of the Interior and the Prime Minister to obviate misunderstanding and suspicion.

While Smuts cannot be accused of being idle, there was, nonetheless, something Micawberish about his Indian policy - waiting for something to turn up. With the Pretoria Agreement now in ruins he 'decided to play for time by reserving assent to the Residential Property Regulation Ordinance, thereby hopefully alienating neither European nor Indian opinion, and to use the Judicial Commission as an excuse to delay a firm commital [*sic*] to a particular line of action.'¹⁸⁰ On 7 December 1944 S.R.Naidoo and Kajee who were members of the Natal Indian Judicial

177. Minute and Agenda Book, S.A.I.C., 8-10.2.1946, Prime Minister's Note for Information of N.I.C., 30.11.1944, para. 3, 2. For further copies of this Note, see, A1, Vol. 160, No. 8 (Smuts Archives, Public Papers); A1/Dg (Hofmeyr Papers).

178. Prime Minister's Note for Information of N.I.C., 30.11.1944, para. 7, 4.

179. *Ibid.*, para. 8, 4. The Commission had suspended its sittings from 3.11.1944 without reason but probably because the Natal Ordinances had pre-empted its findings and rendered their enquiry useless; alternatively it was awaiting a decision as to whether the Commission was unconstitutional as claimed by the Administrator; see, A1/Dg (Hofmeyr Papers), J.D. Rheinallt-Jones - Hofmeyr, 10.11.1944, Annexure, M. Webb, Note on Situation arising out of Residential Control Ordinance, n.d., para. 6, 1; Interim Report (Ug 22/1945, 16.3.45), para. 36, 8.

180. White, 'The Evolution of Policy, 1943-1948', 72.

Commission resigned as Commissioners. They felt that the passing of the various Ordinances while the Judicial Commission was being conducted was tantamount to prejudging the issues involved. The N.I.C. also exhorted the Indian community not to co-operate with the Commission.¹⁸¹

The Natal Indian Judicial Commission had been appointed to enquire into and report, inter alia, upon matters affecting the Indian community of the Province of Natal with special reference to housing and health needs, civic amenities and civic status, the provision of adequate residential, educational, religious and recreational facilities, under the Chairmanship of Justice F.N.Broome. Researchers in this field have made passing reference to the work of this Commission. For the Indian community the Commission was significant because for the first time Indians were going to serve on a Judicial Commission of Enquiry in the country concerned with Indian interests primarily. A great volume of evidence, mainly in the form of memoranda,¹⁸² furnished a wealth of information concerning the Indian community. It is unfortunate that the work of the Commission proved abortive, for a detailed examination of the evidence presented to the Commission indicates the huge hiatus that flawed Indo-European relations in Durban. It is hardly an oversimplifica-

181. A1, Vol. 160, No. 8 (Smuts Archives, Public Papers), A Resolution by the N.I.C. passed at Committee Meeting, 10.12.1944, para. 4(a), 3. For a further copy of the Resolution see, A1/Dg (Hofmeyr Papers); see also, Interim Report, (UG 22/1945, 16.3.45), para. 36, 8.

182. Most of these memoranda are in the author's possession. Space precludes the author from dealing with the work of this Commission in detail in this thesis.

tion to say that if the authorities had taken cognizance of the legitimate demands of the Indian community as adumbrated in the various memoranda the 'Indian penetration' issue would not have assumed the proportions of factional strife that it ultimately did.

Eventually the Natal Ordinances were declared ultra vires with respect to the powers of the Provincial Council.¹⁸³ To overcome the problems related to expropriation and housing the Government amended the Housing Act No.35 of 1920(as amended by Act No.31 of 1936) and promulgated the Housing (Emergency Powers) Act, 1945.¹⁸⁴ Thus ended the Pretoria Agreement. It had 'promised to be the first piece of legislation ever initiated and negotiated by Indian leaders.'¹⁸⁵ The spirit of the Agreement was that Indians would subscribe to control over residential occupation in Durban without prejudicing their inherent right to ownership of property. This was totally rejected by the European community who maintained that to negotiate the question of occupation while leaving the question of ownership untouched was merely sowing the seeds of discord for the future. They wanted to circumscribe the rights of the Indians to acquire land for trading and investment purposes as well as to the residential juxtaposition of Whites and Indians. It was this diversion of opinion on which the Pretoria Agreement eventually foundered.

183. Kondapi, Indians Overseas, 1838-1949, 271; see also, The Natal Daily News, 20.2.1945; The African World, 24.2.1945, 121.

184. See above, Chapter Four, 156; also, The Natal Mercury, 15.3.1945.

185. Calpin, Indians in South Africa, 207.

The Pretoria Agreement provoked violent White reaction and was vigorously condemned by those who claimed that they had not been consulted. The Durban City Council, for instance, deplored the fact that they had been excluded from the negotiations. It must be conceded that as the provisions of the Pretoria Agreement would have been principally applied to Durban, it was a definite error of judgment on the part of Smuts to have neglected to invite the D.C.C. to the negotiating table at Pretoria. But the D.C.C. as body politic of all ratepayers in Durban cannot be condoned for its partisanship to Whites and blatant discrimination against the Indian community. In their opposition to the Pretoria Agreement and the Draft Occupation Control Ordinance the D.C.C., as much as other White community based organisations and political parties, created a situation which degenerated into an 'unsavoury and disgraceful episode' and which no doubt was the 'climax of racialism.'¹⁸⁶

For the Indian community it was a compromise conceived by those accepting the Agreement as a policy of constructive engagement in the best interests of the community; those who opposed it felt that the leaders had ulterior motives, with 'an eye to their investments and not to the general needs of the Indian community.'¹⁸⁷ They considered the Agreement as the acceptance of the principle of segregation.¹⁸⁸

186. Khan, The Indian in South Africa, 431.

187. K.C.M. 17062 (Mabel Palmer Papers), Notes on Indians, 8; see also, Pahad, 'The Development of Indian Political Movements', 191; The Forum, (6.5.1944), (7), (6), 20.

188. K.C.M. 21825 (Maurice Webb Papers), 'South African Indians and the Question of Land', Address, January, 1948, 6.

For Smuts the Pretoria Agreement was an opportunity for closer rapport with India. The 'Pegging Act' had created a serious rift in the harmonious relations between South Africa and India. Smuts was also 'criticised in Imperial and Allied circles for creating an embarrassing situation at a time when the world war demanded united effort for victory.'¹⁸⁹ The Agreement solved Smuts's dilemma of having to attend the Commonwealth Conference, and the Charter-making Conference in San Francisco after that, with the 'Pegging Act' on the Statute Book hanging like the veritable albatross around his neck. As Hancock states: 'He set out in good heart;...' ¹⁹⁰ But its failure had serious repercussions for Smuts. He was greatly embarrassed by Heaton-Nicholls whose pronouncedly hostile actions damaged his prestige both within South Africa and abroad. India had implemented the counter-measures with which she had been threatening Smuts especially the application of the Reciprocity Act. But at home Heaton-Nicholls posed a serious threat from a constitutional point of view in his challenge to the Union Government in the handling of the Indian question.¹⁹¹

For Kajee, personally, the interview with Smuts was his 'finest hour' and the Pretoria Agreement probably his 'greatest achievement'.¹⁹² But the Agreement also proved his undoing, his 'Munich', for the intense opposition of the radicals to the Agreement also crystallised against the moderate leadership. Hancock is correct when he states that Kajee and his moderate colleagues 'had made a large concession'.¹⁹³ It was a concession to European susceptibilities 'in the nature of a realistic

189. Joshi, Verdict on South Africa, 330.

190. Hancock, Smuts: The Fields of Force: 1919-1950, 463.

191. W.C.L., AD843/B.4.2 (S.A.I.R.R. Papers), J.D.Rheinallt-Jones - H.S.L.Polak, 15.2.1945.

192. Calpin, A.I.Kajee, 139.

193. Hancock, Smuts: The Fields of Force: 1919-1950, 463.

recognition of a factual situation in real terms...';¹⁹⁴ but it was rejected by Whites.

Kajee and the others who negotiated the Agreement had certainly 'drawn the teeth of the Pegging Act and had established the procedure of joint European-Indian action in matters of common concern.'¹⁹⁵ But contrary to Hancock's view the Indian leaders achieved this most certainly by sacrificing the principle of the inherent right to live where one chooses¹⁹⁶ and as such it could hardly be 'fortifying of Indian self-respect'.¹⁹⁷ This was clearly evident in the repudiation of the 'Accommodationists' by the radical group who alleged that the former had bartered away the rights of the Indian people by their compromise.¹⁹⁸ Their action was also condemned by the Anti-Segregation Council who claimed that : 'For the first time in the history of the Indian people, so-called Indian leaders have voluntarily agreed to the legal segregation of the Indian people.'¹⁹⁹

In spite of the recalcitrance of the 'Confrontationists', it must be admitted, that the Pretoria Agreement had the potential for an ameliorative, evolutionary step forward. As Douglas Mitchell reflected with hindsight 'an important precedent had been established' which could

194. Indian Views, Editorial, 9.6.1944, 1.

195. Hancock, Smuts: The Fields of Force: 1919-1950, 463.

196. See also comment made in this regard by Pahad, 'The Development of Indian Political Movements', 193-94.

197. Hancock, Smuts: The Fields of Force: 1919-1950, 463.

198. The Forum, (16.12.1944), (7), (8), 19.

199. UNISA, Microfilm Reel 15, No.252: E A 1: 84/1 (The Carter-Karis Collection), Anti-Segregation Council, The Indian People Betrayed, n.d.

have constituted the basis for 'further constitutional developments and negotiations.'²⁰⁰ Even Heaton-Nicholls relented: 'I was probably very unwise to have allowed the matter to go to a Select Committee.'²⁰¹ This revelation goes to the heart of the matter. For the Select Committee had sat for weeks and the publicity surrounding the proceedings 'gave further opportunity for exploiting racial feelings for political purposes.'²⁰²

It was perhaps an opportunity missed. The Pretoria Agreement epitomised restraint rather than law in connection with 'Indian penetration'.²⁰³ But the effort made was not successful: 'a good deal of misunderstanding, wilful misrepresentation and attributing of motives...clouded the issues.'²⁰⁴ Relations between South Africa and India deteriorated rapidly as did Indo-European relations within the country. As Hancock speculates:

'If the Pretoria Agreement had gone through in 1944 there need have been no Indian-South African quarrel two years later at the General Assembly of the United Nations.'²⁰⁵

200. Wilks, The Biography of Douglas Mitchell, 42.

201. K.C.M. 3426(2) (G.Heaton-Nicholls Papers), Heaton-Nicholls - Mitchell, 11.7.1945.

202. L.Byron, Recollections of an Octogenarian (Durban, Robinson and Co. (Printers), n.d.), 162.

Note: Byron was one of the members of the Select Committee considering the Draft Occupation Control Ordinance.

203. P.D.Hey, The Rise of the Natal Indian Élite (Pietermaritzburg, Shuter and Shooter, 1961), 55.

204. The Leader, Editorial, 20.5.1944, 4.

205. Hancock, Smuts: The Fields of Force: 1919-1950, 473.

Note: Smuts later stated that the Pretoria Agreement had failed because of his absence from the country. See, J. van der Poel (Ed.), Selections from the Smuts Papers, Vol.VII, 34.

CHAPTER SEVEN

THE COUP DE GRÂCE OF ANTI-INDIAN AGITATION -

THE 'GHETTO ACT'.

The euphoria in the Indian community when the N.I.A. and the N.I.C. merged in August 1943 into the N.I.C. (as established by Mahatma Gandhi in 1894) was soon dissipated as a result of several developments. These were: the humiliation of the 'Pegging Act'; the rejection and failure of the much vaunted Pretoria Agreement; the controversy surrounding the clutch of forbidding Natal Ordinances; and, the disappointment over the Natal Indian Judicial Commission. These events diminished the hope for negotiation politics between Indians and Europeans in South Africa by 1945.

The formation of the A.S.C. on 28 April 1944¹ in opposition to the Pretoria Agreement marked the first definite firming of radical attitudes to the moderate leadership in Indian politics. Heeding Sir Shafa'at Ahmad Khan's suggestion the A.S.C. did not break away from the N.I.C. to form a new body,² but strove from within to act as the ginger group for a more militant and uncompromising approach to Indian political activity. Its membership at the time of its formation comprised 'intellectuals and trade-unionists'³ as well as social, cultural, sporting and other bodies. In its 'resolve to build the congress up until it becomes truly representative of the Indian people'⁴ it began to widen its base by enrolling workers, farmers and others. Their herculean effort was rewarded by a substantial increase in membership of the N.I.C from 17 000 in 1943 to 35 000 in 1945.⁵

1. See above, Chapter Six, 211.

2. See, Khan, The Indian in South Africa, 469.

3. Kuper, Indian People in Natal, 49.

4. The Natal Daily News, 29.4.1944; see also, The Leader, 28.4.1945, 3.

5. Johnson, 'Indians and Apartheid in South Africa', 22.

The A.S.C. soon evolved into a formidable force opposed to the accommodationist Kajee-Pather Group. The policies of the A.S.C. and the Kajee-Pather Group were on 'opposite ends of the political spectrum.'⁶ The Kajee-Pather Group comprised mainly the commercial and trading class and as such was concerned with the interests of the traders and the merchants primarily. It appeared therefore that they had no faith in the working class. They did not believe in the efficacy of mass agitation to remove the disabilities of the Indian community. The N.I.C. under Kajee's leadership had a small, wealthy membership. The Kajee-Pather Group were quite content in adopting a docile policy of compromise to gain little concessions for the few at the expense of the greater issues affecting the majority of the Indians. Finally they were satisfied to ask for a qualified franchise. In contrast, the A.S.C. declared that: it placed faith in the common man to struggle for his rights and freedom; it believed in mass agitation; it wanted to make Congress great and strong; it was opposed to compromise; it demanded full franchise.⁷ The belligerent spirit implicit in the manifesto of the A.S.C. promised hope for the future while Kajee's moderate approach was criticised as being ineffective.

Moreover A.S.C. supporters were mainly in the Durban area while many of the loyal supporters of the N.I.C. were concentrated in the rural areas such as Northern Natal. The N.I.C. organisation was 'appallingly

6. Pahad, 'The Development of Indian Political Movements', 195.

7. The Leader, 28.4.1945, 3; see also, 355, Appendix III,

bad'⁸: the source of income was erratic money being donated by a few wealthy individuals. It was obvious that in an election the A.S.C. supporters would oust the moderates for as 'an elite lobby they were unequipped for a public struggle determined by the number of adherents a faction could mobilize.'⁹ Since the merger of the N.I.C. and the N.I.A. on 29 August 1943 when officials of the N.I.C. were elected,¹⁰ not a single general or special general meeting of members had been held.¹¹ The A.S.C. began clamouring for an election. The criticism against N.I.C. leadership for failing to act constitutionally was destroying the credibility of the moderate leadership.

The moderate leadership realised that their position was in danger. They attempted to manipulate the Congress machinery to their advantage. A Congress Election Committee was appointed to conduct their election campaign. It was announced that the annual general meeting which ought to have been held in September 1944 would now be held on 28 January 1945 in the City Hall. This choice of venue was criticised by the A.S.C. as the membership of the Congress exceeded the seating capacity of the City Hall¹² which was 2 500. Further unexpected injunctions were imposed: voting was to be by ballot only instead of the usual show of hands;¹³ voters would have to produce their membership cards; and each voter had to pay one shilling to enable him to participate in the meeting.¹⁴ The A.S.C. viewed these constraints as being surreptitiously designed to prevent the masses from taking part in the deliberations.

8. Calpin, Indians in South Africa, 185, f/n. 1.

9. Johnson, 'Indians and Apartheid in South Africa', 66.

10. The Leader, 4.9.1943, 1.

11. Indian Opinion, Editorial, 12.1.1945.

12. White, 'The Evolution of Policy, 1943-1948', 77.

13. Indian Views, 9.2.1945, 1.

14. Indian Opinion, Editorial, 12.1.1945.

These new arrangements led to such a hue and cry that the moderates postponed the meeting to 4 February 1945, then to 4 March and eventually to 18 March.¹⁵ Subsequent to the postponement of the 4 March meeting the N.I.C. leaders explained that the constitution was inadequate to provide for officers except at a mass meeting.¹⁶ They wanted to draft a new constitution which would provide for members in the rural areas to record their votes. It was to be planned along federal lines with a proper delimitation of areas, a federal assembly and the election of a federal council and voting by ballot.¹⁷ A sub-committee had been appointed at the meeting to draft the new constitution.

But the meeting scheduled for 18 March was again postponed. According to J.W.Godfrey, the President of the N.I.C., the membership list had not been completed and no record was available of new members who had enrolled.¹⁸ He appealed to the community: 'The public must be patient....I am satisfied that no present Natal Indian Congress "so-called leader" desires to hug or retain any office.'¹⁹ The A.S.C. held a contrary view. Dr Y.M.Dadoo echoed their sentiments when he declared: 'The postponement of elections by the Congress Committee to an indefinite date is a clear indication that the Kajee-Pather leadership fears a shattering reverse at the hands of the voters.'²⁰ There seems to be a great deal of truth in Dadoo's conclusion. It was obvious that the accommodationist element was shilly-shallying. The attempt to amend the constitution was merely an excuse to safeguard their position. The enthusiastic response given to the A.S.C. at meetings throughout the province indicated clearly that the community was disenchanted with the

15. Affidavit by Dr G.M.Naicker in The Leader, 8.9.1945, 1.

16. The Leader, 10.3.1945, 5; see also, Indian Opinion, Editorial, 9.3.1945.

17. The Leader, 10.3.1945, 5.

18. The Leader, 17.3.1945, 1.

19. Ibid., 1; see also, Indian Views, 9.3.1945, 1.

20. The Leader, 10.3.1945, 5.

'Old Guard'.²¹ Many Indians were receiving higher education and there was a general improvement in social and economic conditions. Trade unionists and intellectuals, imbued with Marxist, neo-Marxist and democratic ideals gained at universities and through travels abroad, helped in the radicalisation of a sizeable majority of the Indian community.

The A.S.C. was determined to force the issue of an election.²² Dr G.M. Naicker, Dr B.T.Chetty and A.K.M.Docrat through their attorney demanded that the annual general meeting be held, that no stipulation be made for voting by ballot as there was no such provision in the constitution and that the venue should be some place in Durban that would enable all members of the Congress to attend and participate in the meeting. The N.I.C. was warned that if it did not comply with these terms the matter would be taken to court.²³ The N.I.C. in reply called for detailed explanations as to why the demand for elections was being made.²⁴ The A.S.C. interpreted this action as a delaying tactic and decided to petition the Supreme Court to order the Congress officials to hold the meeting rather than replying to the letter of the N.I.C. On 15 August 1945 an application was made to the Supreme Court, Pietermaritzburg, directing the Committee of the N.I.C to hold the annual general meeting of the N.I.C not later than 30 September 1945. The hearing was scheduled for 4 September.²⁵ At the hearing the N.I.C. asserted that they had feared 'chaos and bloodshed' if the annual general meeting was held.²⁶

21. Pahad, 'The Development of Indian Political Movements', 198.

22. The Natal Daily News, 6.3.1945.

23. I.A.P., A. Christopher - Messrs P.R.Pather and A.B.Moosa, 6.3.1945; see also, The Leader, 10.3.1945, 5; The Natal Daily News, 12.3.1945.

24. I.A.P., Anti-Segregation Council Bulletin, 20.3.1945, No.3, 1.

25. I.A.P., A. Christopher - P.G.Naicker, 14.8.1945, see also, The Natal Mercury, 16.8.1945.

26. The Natal Mercury, 5.9.1945.

Mr F.R.Shaw, K.C., Counsel for the plaintiffs, reminded the Court that three annual general meetings had been advertised. No thought of bloodshed had been mentioned then. The inevitable conclusion was that such a contention 'was a specious after-thought and not a real reason',²⁷ for not holding the annual general meeting. Justice J.P.Hathorn rejected the argument of the respondents that Congress was delaying the annual general meeting until the new constitution was adopted. He remonstrated with the Counsel for the respondents, Mr L.R.Caney, K.C., stating: 'Your clients have driven a coach and horses through the constitution and they want a new constitution.'²⁸ On 11 September 1945 Justice J.P.Hathorn after reviewing the sequence of events leading to the case being brought to Court ruled that the annual general meeting of the N.I.C. was to be held not later than 22 October 1945.²⁹ Indian Views, which supported the Kajee-Pather Group criticised Naicker for his role in the legal battle. It opined that as a member of the Congress Committee he had discredited the Committee in attempting to resolve problems within the N.I.C. by litigation.³⁰ It expressed regret that the Indian community could not present a united front until the 'Pegging Act' expired. It blamed Dadoo and his Communist Party for this split in the community. Dadoo retorted: 'The Court judgment had been a tremendous victory and an indication that the Kajee-Pather Group could not continue to work in the name of the Indian community if the people did not desire it...'³¹ The Indian

27. Indian Opinion, 7.9.1945, 232.

28. The Leader, 8.9.1945, 1; see also, Indian Opinion, 7.9.1945, 232.

29. Indian Opinion, 14.9.1945, 241; see also, The Natal Mercury, 12.9.1945; Indian Views, 19.9.1945, 3; The Leader, 15.9.1945, 1.

30. Indian Views, 19.9.1945, 2.

31. The Leader, 29.9.1945.

Opinion praised the A.S.C. for rendering a service to the community by its persistent action in compelling the N.I.C. to convene the annual general meeting.³²

The 'Old Guard' decided not to offer themselves for re-election.³³

In a conciliatory valediction Godfrey said:

'...a large section of the Indian community felt that the policy of the Congress was not active enough. We have done the best we could, but that very best, evidently, is not satisfactory. So we have today decided to hand over the reins of office.'³⁴

He punctiliously commended the A.S.C. for rousing the political consciousness of the Indian community. In contrast, Kajee's comments showed plainly his resentment at being ousted from power. In a patently absurd statement he referred to the need 'for a thorough overhaul of the organisation of the Natal Indian Congress' maintaining that 'Indian political organisation was at a very low ebb' for which state of affairs 'he blamed Mr. Gandhi, who had left behind him a legacy of chaos.'³⁵ Gandhi had left South Africa in 1914. In 1939 when the N.I.A. was formed Kajee continued the existence of the N.I.C. and when the N.I.C. and the N.I.A. merged in 1943 Kajee remained the dominant figure in the N.I.C. It is ironic that Kajee, 'a man of considerable ability,'³⁶ failed to improve the organisation but instead elected to blame Gandhi so far removed in time and space from the events in Natal.³⁷

32. Indian Opinion, Editorial, 19.10.1945.

33. The Natal Daily News, 17.9.1945.

34. The Leader, 20.10.1945, 1.

35. Ibid., 1.

36. Calpin, Indians in South Africa, 213, f/n.1.

37. See also, Pahad, 'The Development of Indian Political Movements', 199 for further comment.

On 14 October 1945 the 54 officials of the N.I.C. comprising the Kajee-Pather Group resigned from office.³⁸ This brought to a climax the long, bitter feud between the moderates and the radical elements in the N.I.C. on the Indian political front. It is important to note that though Kajee and Pather had given up their leadership role, they were held in high esteem by Naicker and George Singh, who became President and Chairman of the N.I.C. respectively. Kajee often consulted with George Singh on many issues subsequently. Naicker and Singh often sought the advice of Kajee and Pather. There was a great deal of collaboration rather than antagonism between the new leadership and the old.³⁹

On 21 October 1945 the N.I.C. annual general meeting was held at Curries Fountain Sports Ground. More than 7 000 voted the A.S.C. into power.⁴⁰ Some 500 women participated. This was the first time that women were present at an annual general meeting of the N.I.C. in such numbers. By a unanimous vote it was decided to hold the election of office bearers by a show of hands. A list of nominations was submitted and accepted en bloc. The new Congress cabinet comprised: Dr G.M.Naicker, President; Mr George Singh, Chairman of Committee; Messrs M.D.Naidoo and A.I.Meer, Joint Honorary Secretaries; Messrs M. Parekh and Hajee E.H.Ismail, Joint Honorary Treasurers.⁴¹ Ten vice-presidents and thirty committee members were also elected.⁴²

38. The Natal Daily News, 15.10.1945; see also, The Natal Mercury, 15.10.1945; Indian Views, 17.10.1945, 2 gave the figure as 56.

39. Interview with George Singh, Durban, 8.9.1983. He was the first Indian in South Africa to gain an LL.B. degree at a South African University. He is highly respected for his contribution to the political life of all non-Whites in South Africa.

40. The Natal Mercury, 22.10.1945; see also, The Natal Daily News, 22.10.1945.

41. The Leader, 27.10.1945, 1-3.

42. See, Ibid., Indian Views, 24.10.1945, 1 and Pahad, 'The Development of Indian Political Movements', 199, f/n.3, for the names of these members.

Dr Naicker explained that because the Kajee-Pather Group were outdated the A.S.C. candidates were elected.⁴³ George Singh solemnly declared: 'We have given birth to a new era in Indian politics...'⁴⁴ This was no impetuous, demagogic declaration. With the A.S.C. firmly ensconced as the mouthpiece of the Indian community Indian politics came to be characterised by a determined, intractable and bold opposition to government policies. Men of moderation and conciliation had been replaced by those vehemently opposed to the entrenchment of racism and White hegemony over the non-European peoples. Closer links were to be forged with other national organisations and the Communist Party. The N.I.C. even identified itself with those involved in anti-imperialist activities in countries abroad.⁴⁵

The Congress outlined as its immediate programme: the demand for the unconditional repeal of the 'Pegging Act'; the vetoing of the Natal Housing Ordinance; no segregation and no residential zoning; the removal of the Provincial barriers; adult suffrage for the Indian people; free

43. The Leader, 27.10.1945, 1. Naicker was described as 'the very epitome of the oriental leader, speaking quietly, sincerely, and deliberately, and holding himself in that controlled, motionless posture behind which one senses a tremendous emotional and intellectual strength.'

J.Hatch, The Dilemma of South Africa, (London, Dennis Dobson Ltd., 1952), 222.

44. The Leader, 27.10.1945, 1.

45. See also, Pahad, 'The Development of Indian Political Movements', 200.

education for Indian children up to the Junior Certificate examination.⁴⁶ Ginwala points out that this programme 'was an Indian programme in that it dealt with their disabilities only.'⁴⁷ Lacking the force of the vote to effect a change in Government policy towards the Indians, they gradually broadened the struggle from the sectional and parochial interests of the Indian community to the wider context of a democratic South Africa in collaboration with the African National Congress (A.N.C.). But this was to come much later.

While the controversy between the accommodationist and radical elements in the Indian community was raging, Smuts expressed his intention to confer with Indian leaders while speaking at a reception for the Aga Khan in Pretoria.⁴⁸ White indicates that 'with a strange lack of insight' Smuts was probably contemplating the resuscitation of the Pretoria Agreement.⁴⁹ European opinion in Durban was volubly aggrieved at the proposed conference. The D.C.C. urged that it be kept fully informed and wanted an interview with Smuts⁵⁰ as did the N.M.A.⁵¹ Smuts agreed to meet on 12 October 1945 the delegations from the D.C.C., the N.M.A. and later on the same day with representatives from the Durban Wards Association. He reserved the afternoon to meet a delegation from the N.I.C. The A.S.C. had as early as March 1945 informed Smuts that the Kajee-Pather Group did not enjoy the support of the majority of Indians.⁵² They warned him that decisions arrived at between Smuts and the Kajee-Pather Group would not be binding on the Indian community. For

46. The Leader, 27.10.1945, 1.

47. Ginwala, 'Class, Consciousness and Control', 420.

48. The Natal Mercury, 10.8.1945.

49. White 'The Evolution of Policy, 1943-1948', 84.

50. N.A., Vol. 74, File 527(14) (D.C.C., T.C.O.), The Town Clerk, Durban - The Private Secretary to the Prime Minister, 12.9.1945.

51. N.A., Vol. 71, File 527(14) (D.C.C., T.C.O.), Secretary, N.M.A. - The Town Clerk, Durban, 24.9.1945.

52. A1, Vol. 161, No. 18 (Smuts Archives, Public Papers), Telegram: A.S.C. - Smuts, 24.3.1945.

the October meeting the A.S.C. once again advised Smuts that the Kajee-Pather Group were not qualified to discuss the issues of the Indian question. He was also informed that the moderates were not seeking re-election to the official positions in the N.I.C. The A.S.C. accordingly requested a postponement of the conference till after the annual general meeting of the N.I.C.⁵³ Smuts acceded to this request. He met with the White delegations as scheduled.⁵⁴

In a bulky memorandum the D.C.C. sketched the background to the Indo-European friction in Durban. It demanded a separation of the various racial groups of the Province.⁵⁵ This was in keeping with its declared policy that the Indian population should be accommodated separately from the European areas. Its 'radial zoning' proposals submitted to the Provincial Post-War Works and Reconstruction Commission attempted to implement this segregation as the solution to the problem of Indo-European relations in Durban. It argued that its proposals were the only basis for remedying the situation and asked for legislative sanction and financial assistance for the implementation of its schemes.⁵⁶ The N.M.A. in similar vein demanded 'the enactment of appropriate and enduring legislation' without 'further delay'.⁵⁷ Smuts

53. Indian Views, 10.10.1945, 3.

54. The Natal Daily News, 8.10.1945.

55. N.A., Vol. 71, File 527(14) (D.C.C., T.C.O.), Memorandum submitted to the Right Honourable the Prime Minister by a deputation from the Durban City Council on 12th. October, 1945, 8.10.1945, para. 21(i), 15.

56. Ibid., para. 35-36, 28.

57. N.A., Vol. 71, File 527(14), (D.C.C., T.C.O.), N.M.A., The Problem of Indian Penetration, Precis of Statement by the Association, Pretoria, 12th. October, 1945, para. 3, 1.

gave the impression of being pleased with the earnestness of the delegations and the cogency of their arguments. He assured both the N.M.A. and the D.C.C. that their appeals would be given his profound and personal consideration.⁵⁸

Smuts met the N.I.C. delegation on 9 November 1945.⁵⁹ The N.I.C. in keeping with its stated programme of action demanded: the extension of adult franchise on the common roll to Natal Indians; abrogation of the 'Pegging Act'; veto of the Housing and Expropriation Ordinances; unequivocal statement denying Housing Authorities the right to implement segregation by way of housing schemes; free and compulsory education for Indians up to the Junior Certificate examination; convening a round table conference with the Government of India.⁶⁰ There seems to be no clarity on Smuts's response to the N.I.C. delegation. The N.I.C. claimed that 'the Prime Minister was visibly affected by our representations'.⁶¹ They stated that throughout the interview the Prime Minister exhibited interest in the Indian question and was anxious to solve the problems. The delegates declared that: 'They were given an excellent hearing and the Prime Minister gave an assurance that very careful consideration would be given to the case.'⁶² White feels that Smuts was conciliatory.⁶³

58. N.A., Vol. 71, File 527(14) (D.C.C., T.C.O.), N.M.A., Secretarial Report, In re Deputation to the Rt. Hble. The Prime Minister of Pretoria on the 12th. October 1945 on the Problem of Indian Penetration in Natal, 3.11.1945, para. 9, 1.

59. Indian Views, 14.11.1945, 5; see also, The Natal Mercury, 10.11.1945; The Natal Daily News, 9.11.1945. The members of the deputation were: Dr G.M. Naicker, George Singh, M.D. Naidoo, Mohanlal Parekh, Hajee E.H. Ismail, I.M. Bawa, B.A. Maharaj, Balraj Goordeen, D.D. Lalla.

60. I.A.P., Memorandum submitted to the Right Honourable the Prime Minister by a Deputation from the Natal Indian Congress on 9th November, 1945, para. 3, 1-2; for a further copy of this memorandum see, Minute and Agenda Book, N.I.C., 31.5.1947-1.6.1947, Annexure to Secretarial Report, 'A'; UNISA, Accession 105, 7.1.3. and 7.3.16.

61. Indian Opinion, Editorial, 16.11.1945.

62. The Natal Mercury, 10.11.1945.

63. White, 'The Evolution of Policy, 1943-1948', 85.

The High Commissioner for India declared that Smuts was not impressed by the delegates.⁶⁴ Mitchell states that when M.D.Naidoo referred to the memorandum as the ultimatum of the N.I.C. Smuts angrily replied:

'You know, Naidoo. I know something about ultimatums. An ultimatum can lead to war. You have given me your ultimatum. I will give you mine. There is the door. Out you go.'⁶⁵

George Singh, who was one of the delegates present there, denies that Smuts made such a declaration.⁶⁶ The N.I.C. nonetheless maintained that Smuts had conceded that their demands were 'indisputable on ethical grounds'; they had 'a right to expect them in a democratic Country'; but in the granting of such rights he doubted whether 'he would be able to carry European public opinion with him'; and, he was afraid that if Indians were granted such rights it 'would stimulate similar demands from the African people throughout the country...'⁶⁷ to which Whites were totally opposed. Smuts also rejected as unwise the suggestion of a round table conference.

Other developments placed Smuts in an invidious position. Madeley, Minister of Labour in the war coalition Cabinet and leader of the Labour Party, had given notice of his resignation from the Cabinet as from the end of October.⁶⁸ Soon after, Stallard, Minister of Mines and leader of the Dominion Party, indicated his intention of withdrawing from the

64. Pahad, 'The Development of Indian Political Movements', 202.

65. Wilks, The Biography of Douglas Mitchell, 53.

66. Interview with George Singh, Durban, 8.9.1983.

67. Minute and Agenda Book, N.I.C., 31.5.1947 - 1.6.1947, Joint Secretarial Report, Interview with Prime Minister, 9.11.1945, para. 18, 4.

68. The Natal Mercury, 20.10.1945.

Cabinet.⁶⁹ This meant that the coalition was at an end. Smuts's majority in the House of Assembly was whittled down considerably. But worse still was the unknown extent to which the Dominion and Labour Parties would exploit the Indian question to gain some political advantage.⁷⁰ The situation had deteriorated since the Pretoria Agreement. Indians had moved to the left. They were emphasising their views more forcibly. The N.I.C. executive was more uncompromising in terms of its programme.⁷¹ European opinion in Natal was consolidating as never before against the Indian community.⁷² In their panic Whites were over-reacting to the Indian question which they conceived as a serious problem which was both immediate and pervasive. With slogans that for many were a substitute for thought they aggravated the tensions and hampered the search for a realistic solution.

Smuts had little option. If he attempted to satisfy the Indian demands for democratic rights and values he would rise in international stature but antagonise the White electorate in Natal to fever pitch. They had little regard for world opinion.⁷³ He unburdened his disquiet to his friend, M.C.Gillett:

'Both sides are unreasonable and press their case too far and too violently...In the end Natal may curse me as much as Indians do...In the last resort I take sides with the European...' 74

69. The Natal Mercury, 22.11.1945; see also, The Natal Daily News, 22.11.1945.

70. J. van der Poel (Ed.), Selections from the Smuts Papers, Vol.V11, 35.

71. Ibid, 35.

72. Indian Views 5.12.1945, 1.

73. Indian Views, 12.9.1945, 1.

74. J. van der Poel (Ed.), Selections from the Smuts Papers, Vol.V11, 47.

Smuts once again sacrificed the Indian at the altar of political expediency.

His decision ⁷⁵ to introduce legislation to replace the 'Pegging Act' was effected on 21 January 1946 when he announced in the House of Assembly that the Government proposed to promulgate legislation relating to land tenure prohibiting transactions of property between Asiatics and persons who were not Asiatics.⁷⁶ The legislation was to apply to the whole province of Natal. As a quid pro quo for the loss of the right to purchase and occupy property without restrictions Indians were to be offered representation in Parliament on a similar basis as that granted to Africans, namely, communal franchise. The European community welcomed the land tenure proposals announced by Smuts.⁷⁷ The franchise question was destined to become the source of much friction later on.

But the Indian community were astounded.⁷⁸ Indian Views summarised Indian reaction to the proposed anti-Indian Bill as: 'a soul searing flame of silent anger and a burning sense of humiliation.'⁷⁹ The N.I.C. convened a mass meeting to protest against the proposed legislation on 3 February 1946. A comprehensive resolution was passed which, inter alia, condemned the proposed Bill as a 'Fascist measure'; rejected communal franchise; confirmed the Congress Committee decision to send a delegation to India to seek support from organisations there and to urge the Government of India to negotiate with the Union Government to convene a round table conference to discuss the situation.⁸⁰

75. Ibid., 35; see also, A1, Vol. 267, No. 235 (Smuts Archives, Private Papers), Smuts - Wavell, 20.12.1945.

76. The Natal Daily News, 21.1.1946; see also, Hansard, Debates of the House of Assembly, Vols. 55-58, 21.1.1946, Col. 10; The Natal Witness, 22.1.1946.

77. The Natal Mercury, 22.1.1946.

78. The Leader, 26.1.1946, 1.

79. Indian Views, 23.1.1946, 2.

80. See, Indian Views, 6. 2.1946, 2; also, Pahad, 'The Development of Indian Political Movements', 202-203; The Natal Mercury, 4.2.1946.

The N.I.C. also called on all Indians and those sympathetic towards the cause of Indians to observe 20 February 1946 as a day of prayer.⁸¹ Appeals were made to all Indian businessmen and professionals to make arrangements to close their businesses and offices on that day from one o'clock in the afternoon until five o'clock.⁸² Support for the N.I.C. call was overwhelming. Some Indians even lost their jobs because of their determination to observe the day of prayer.⁸³ The Indian community adopted a resistance pledge to carry out the instructions of the N.I.C. to attain complete freedom.⁸⁴

The S.A.I.C. deemed it imperative to convene a Conference in order to consider the line of action that should be adopted to deal with the impending legislation. The Conference was held in Cape Town from 8 to 10 February 1946.⁸⁵ Mrs Ballinger who opened the Conference expressed regret that the policy of segregation applicable to the Black community was being extended to the Indian community. R.M.Deshmukh, who succeeded Sir Shafa'at Ahmad Khan as High Commissioner for India, while assuring the Indian community of India's support at the international level reminded Conference that the main burden of the struggle was a local one.⁸⁶

81. The Leader, 26.1.1945, 5.

82. I.A.P., N.I.C.Handbill, Indian Prayer Day, Wednesday, 20th February, 1946.

83. See, The Natal Daily News, 20.2.1946, where an Industrialist dismissed 90 of his Indian workers because they had gone to the prayer meeting at Curries Fountain.

84. Minute and Agenda Book, N.I.C., 31.5.1947-1.6.1947, Pledge Taken by Natal Indians on February 20th, 1946, Secretarial Report, Annexure C; see also, The Leader, 23.2.1946, 5.

85. The Kajee-Pather Group had the support of A.Ismail, President of S.A.I.C. Consequently the Kajee-Pather Group were invited to participate at the Conference as 'fraternal' delegates but having no votes as the radicals were representing the N.I.C. The Natal Daily News, 29.1.1946; see also, Indian Opinion, Editorial, 1.2.1946; H.A.Naidoo, 'Kajee's Role in the Indian Congress', in Freedom, (June 1947), (6), (3), 27; White, 'The Evolution of Policy, 1943-1948', 88-89.

86. Indian Views, 13.2.1946, 3.

The Conference authorised a deputation to interview Smuts requesting him not to introduce legislation that would be to the disadvantage of the Indian community. They advocated the implementation of the Natal Indian Judicial Commission recommendation to convene a round table conference between the Governments of India and the Union. One of the longest deputations ever to be appointed,⁸⁷ numbering some 60 delegates,⁸⁸ interviewed Smuts. Smuts was adamant. He maintained that the office of the High Commissioner for India in South Africa was a satisfactory channel of communication between the two Governments.⁸⁹ He considered a formal round table conference as superfluous. He made it clear that he was going to proceed with the legislation including the granting of communal franchise, 'even though it was unacceptable to the Indians.'⁹⁰

The S.A.I.C. Conference reconstituted itself to listen to the report of the deputation that waited on Smuts. They expressed 'grievous disappointment' at Smuts's attempt to 'appease extreme white reactionaries' while 'repressing the Indian community'.⁹¹ The Conference resolved to mobilise the resources of the Indian community for the annulment of the 'Pegging Act' and opposition to the proposed legislation in various ways. Firstly a deputation was to proceed to

87. Minute and Agenda Book, N.I.C. 31.5.1947-1.6.1947, Secretarial Report, para. 25, 5.

88. Indian Opinion, Editorial, 15.2.1946.

89. Minute and Agenda Book, N.I.C., 31.5.1947-1.6.1947, Secretarial Report, para. 25, 5.

90. Pahad, 'The Development of Indian Political Movements', 204.

91. I.A.P., S.A.I.C., Resolutions passed at the Seventeenth Session, 8-13.2.1946, Resolution No. 2, 2; see also Reports in: The Natal Daily News, 12.2.1946; The Natal Mercury, 12.2.1946; Indian Views, 13.2.1946, 2; Minute and Agenda Book, N.I.C., 31.5.1947-1.6.1947, Secretarial Report, Annexure B; Pachai, The South African Indian Question, 186-187.

India to urge the Indian Government to convene a round table conference between the Governments of India and the Union. If such an effort proved unsuccessful then the Government of India was to be requested to recall its High Commissioner in South Africa; and, the Indian Government was to apply economic sanctions against South Africa. While in India the deputation was to campaign for the sympathetic support of Indians and Indian leaders were to be invited to come out to South Africa. Secondly, deputations were to be sent to America, Britain and other parts of the world. Thirdly, the Indian community should be prepared for 'a concerted and prolonged resistance' the details of which were to be determined by the Executive.⁹² Conference also affirmed the right of the Indian minority in South Africa to be heard at the UNO.⁹³

The N.M.A. and the D.C.C. at an interview with the Prime Minister expressed their appreciation for the proposed legislation.⁹⁴ The D.C.C. supported the general principles of the Bill subject to its being

92. S.A.I.C. Resolutions passed at the Seventeenth Session, 8-13.2.1946, Resolution No.2, 2; see also, Indian Views, 13.2.1946, 3; G.M.Carter, The Politics of Inequality: South Africa since 1948 (London, Thames and Hudson, 1958), 363; H.Wickham, 'The S.A.Indian Congress', in Trek, 22.2.1946, 12.

Note: Even Kajee advocated that the Government of India recall its High Commissioner in South Africa and implement economic sanctions against the Union, indicating the increasing radicalisation of Indian politics. See, White, 'The Evolution of Policy, 1943-1948', 89.

93. S.A.I.C. Resolutions passed at Seventeenth Session, 8-13.2.1946, Resolution No. 3, 3.

94. N.A., Vol.71, File 527(15) (D.C.C., T.C.O.), Town Clerk's Memorandum to Council-in-Committee, Report of City Council's Deputation to Cape Town, re proposed Indian Legislation, 20.2.1946, 3.

satisfied with the delimitation of the scheduled areas.⁹⁵ A deputation of the D.C.C. was in close liaison with the Minister of the Interior to ensure that European interests in Durban were not adversely affected.⁹⁶ The Durban Joint Wards Committee was eminently satisfied that the proposed legislation had incorporated its requests made to the Prime Minister when they had interviewed him on 12 October 1945.⁹⁷ The Government of India gave informal notice of its intention to terminate trade relations with South Africa.⁹⁸ The High Commissioner had failed to persuade the Union Government to convene a round table conference and Smuts remained unmoved by the plea of his old adversary and friend, Gandhi, who wrote to Smuts saying: 'It ill becomes you. Least you should do is to withdraw threatened land and franchise measure and call advisory round-table conference...'⁹⁹

95. N.A., Vol. 71, File 527(15) (D.C.C., T.C.O.), The Town Clerk, Durban - The Minister of the Interior, 28.2.1946; see also, The Natal Mercury, 26.2.1946; Minutes of the Durban City Council, 25.2.1946, 423; see below, 277, for details of scheduled areas.

96. N.A., Vol. 71, File 527(16) (D.C.C., T.C.O.), Report of Deputation on Asiatic Land Tenure and Indian Representation Bill, 1946, 12.4.1946.

97. I.A.P., Asiatic Land Bill, Leaflet, Durban Joint Wards Committee, 26.2.1946.

Note: While the Durban Joint Wards Committee indicated in a press statement that the deputation to the Prime Minister had accepted the Bill as a compromise even though Europeans in Durban 'were making very substantial concessions', no details at all were given of these 'concessions'.

See also, White, 'The Evolution of Policy, 1943-1948', 90.

98. The Natal Daily News, 12.3.1946; see also, The African World, 16.3.1946; Hansard, Debates of the House of Assembly, Vols. 55-58, 13.3.1946, Col. 3458, Smuts's reply to Stallard's question in this regard; Khan, The Indian in South Africa, 479-80, for full text of Dr N.B. Khare's announcement in the Council of State.

99. A1, Vol. 268, No. 157 (Smuts Archives, Private Papers), Telegram: Gandhi-Smuts, 18.3.1946; see also, J. van der Poel (Ed.), Selections from the Smuts Papers, Vol. V11, 50.

Smuts introduced the Asiatic Land Tenure and Indian Representation Bill in the House of Assembly on 15 March 1946, and the Second Reading was then scheduled for 25 March 1946.¹⁰⁰ The debate on this Bill proved to be 'the longest in South African parliamentary history on a single piece of legislation.'¹⁰¹

In the opening remarks of his speech Smuts attempted to allay the fear of international interference by maintaining that the measure was essentially an internal one. He emphasised that while discharging 'humanitarian duties' to the Indians the fundamental issue was 'to preserve the European orientation' of society in South Africa.¹⁰² He pointed out that the principles incorporated into the Asiatic Bill were similar to those which were applicable to the Blacks. He explained that the Bill comprised two parts: the first dealing with the land question and the second with political rights. He insisted that the 'Bill shall be passed as a whole and if it is not passed as a whole, it falls away.'¹⁰³

100. Hansard, Debates of the House of Assembly, Vols.55-58, 15.3.1946, Col.3630.

101. L.De Villiers, South Africa Drawn in Colour, 107. For similar comments see:

The Natal Mercury, Editorial, 3.4.1946; State Information Office, The Indian in South Africa, 2; Calpin, Indians in South Africa, 239. Time and space precludes us from giving detailed accounts of the debates. We shall highlight the principal points that emerged from the debates. The debates commenced on 25.3.1946 and continued until the amendments from the Senate were considered on 25.5.1946. The following references to Hansard, Debates of the House of Assembly, Vols.55-58, indicate the glut of oratory on the Bill:
Col. 4162-4238; 4295-4527; 4536-4562;
4621-4771; 4829-4846; 4866-4956;
5044-5189; 5255-5448; 5452-5510;
5517-5574; 5627-5748; 8453-8512;

102. Hansard, Debates of the House of Assembly, Vols.55-58, 25.3.1946, Col.4162; see also, The Natal Daily News, 25.3.1946.

103. Hansard, Debates of the House of Assembly, Vols.55-58, 25.3.1946, Col.4165; see also, Khan, The Indian in South Africa, 503.

THE NATAL DAILY NEWS, TUESDAY, MARCH 26, 1946.



ALADDIN: "OPEN, SESAME!"

SUNDAY TIMES, JOHANNESBURG, TRANSVAAL, MARCH 31, 1946.



ORPHAN OF THE STORM

THE NATAL MERCURY, THURSDAY, MARCH 28, 1946.



Smuts informed the House that he had not agreed to a round table conference with the Government of India as suggested by the Broome Commission because he considered its success a remote possibility. Europeans might have disliked the solutions emanating from such a conference. This would have aggravated the conflict. Finally, the issue was a domestic one for solution by South Africa herself.¹⁰⁴ He also elucidated his reasons for rejecting the suggestion of a qualified franchise. This had been mooted by the N.I.C. and the Broome Commission. He stated: '...as far as Natal is concerned it is no solution at all, because the European people there will not accept it,...'¹⁰⁵

Dr Malan, Leader of the Opposition, criticised the Prime Minister for the haste with which the Bill was being passed through Parliament. His objection to the Bill focussed primarily on the question of the franchise being given to Indians.¹⁰⁶ He supported the Bill to the extent that it guaranteed segregation of the races in residence and ownership of property.

Likewise, Stallard of the Dominion Party considered the Bill to be an improvement on the 'Pegging Act'. He accepted the general principle of racial segregation manifested by the Bill. But he would not subscribe to the granting of franchise to the Indians. He decried the concession as

104. Hansard, Debates of the House of Assembly, Vols.55-58, 25.3.1946, Col.4171.

105. Ibid., Col.4173; see also, Calpin, Indians in South Africa, 222-223. He described Smuts's arguments as reductio ad absurdum reasoning; Khan, The Indian in South Africa, 514-538, where a scholarly analysis has been made of Smuts's speech on the Second Reading Debate of the Bill.

106. Hansard, Debates of the House of Assembly, Vols.55-58, 25.3.1946, Cols.4185-4187.

'an invasion of our constitutional system of government.'¹⁰⁷ In typical jingoistic fashion Stallard warned the Indian community that their declaration of intent to appeal to the UNO to intercede on their behalf could well result in their being totally expelled from South Africa.¹⁰⁸

Mrs Ballinger came to the defence of Indians as she had done for the 'Pegging Act'. She opposed the franchise clauses of the Bill as well as the land tenure clauses. She used the model of the Black legislation on which the Asiatic Bill was based to show that the legislation had spawned animosity rather than friendliness. She emphasised 'that the possibility of achieving peace between Europeans and non-Europeans by this type of legislation is illusory.'¹⁰⁹

The Labour Party was in travail with dissension in its ranks.¹¹⁰ It was unable to muster unanimity on non-European policy. It was no less reactionary than the Nationalists. Madeley delivered a 'confused speech in parliament.'¹¹¹ The main thrust of his argument was that while he accepted the proposal for segregation he deprecated the granting of the franchise in any form to the Indian community.¹¹²

But it was Hofmeyr who once more disappointed the Indian community. In the United Party caucus Smuts had faced intense opposition in regard to the granting of the franchise to the Indian community, so much so that Smuts 'appeared as the defender of Indians against reaction and repression and the Bill as a charter of freedom, instead of what it was

107. Hansard, Debates of the House of Assembly, Vols.55-58, 26.3.1946, Col.4303.

108. Ibid., Col.4307; see also, Calpin, Indians in South Africa, 233-234.

109. Hansard, Debates of the House of Assembly, Vols.55-58, 26.3.1946, Col.4310.

110. See, The Natal Daily News, 10.4.1946; see also, A410/B.1.107 (Ballinger Papers), [Report on] Asiatic Land Tenure and Indian Representation Bill, n.d.

111. Calpin, Indians in South Africa, 238.

112. Hansard, Debates of the House of Assembly, Vols.55-58, 27.3.1946, Col.4339.

in reality - a piece of concealed discrimination.' ¹¹³ Hofmeyr had expressed anguish over the treatment of Indians. He had intimated to Smuts: '...we are making a surrender to European prejudice in Natal which I for one shall find it difficult to justify.' ¹¹⁴ He advised that the communal franchise should be abandoned in favour of a loaded franchise. A few days later he boldly denounced the 'Herrenvolk mentality' in South Africa and the tyranny of race and colour prejudice in his address as Chancellor of the University of the Witwatersrand. ¹¹⁵

As a result of these declarations the United Party caucus and the Indian community came to believe that Hofmeyr would oppose the Bill. But instead, he said: 'I accept the Bill as a compromise'. ¹¹⁶ He justified his support for the Bill on the grounds that it afforded the Indian community political rights, and he accepted the 'communal franchise for the Indians rather than no franchise at all.' ¹¹⁷ Despite the fact that his speech was 'the most challenging and the bravest of all his illustrious utterances' ¹¹⁸ in the final analysis, like Smuts, he succumbed to political expedience. It must be conceded that both Hofmeyr and Smuts were in an unenviable position as they faced the problem of the clash between ideal values and politics. For the sake of their Party and the Government the ideal values were abandoned.

113. Calpin, Indians in South Africa, 224.

114. J. van der Poel (Ed.), Selections from the Smuts Papers, Vol.V11, 49.

115. The Star, 16.3.1946; see also, The Natal Daily News, 16.3.1946; Paton, Hofmeyr, (Abridged Edition), 325-327; The Sunday Times, 17.3.1946.

116. Hansard, Debates of the House of Assembly, Vols.55-58, 28.3.1946, Col.4430; see also, A1/Aa(Hofmeyr Papers), Hofmeyr - Underhill, 7.4.1946; The Natal Daily News, 28.3.1946.

117. Hansard, Debates of the House of Assembly, Vols.55-58, 28.3.1946, Cols.4434-4435; see also, Paton, Hofmeyr, (Abridged Edition), 328.

118. The Natal Daily News, 29.3.1946; see also, The Rand Daily Mail, 29.3.1946 where an M.P. described his speech as: 'One of the most courageous speeches ever made in South Africa.'

On 2 April 1946 the Asiatic Bill passed its Second Reading by 86 votes to 49 ¹¹⁹ with some members of the Dominion Party voting with the Opposition. The Bill soon passed through the Committee stage and its Third Reading by 78 votes to 50 ¹²⁰ amid loud Government cheering. The Rand Daily Mail declared: 'The adoption of the Bill was a personal triumph for the Prime Minister who, for more than three weeks devoted all his energies and his outstanding parliamentary skill to piloting the contentious measure through the House.' ¹²¹

Senator Clarkson introduced the Bill in the Senate on 29 April 1946. The Second Reading was scheduled for 30 April 1946. He moved also that Government business was to take precedence in the Senate until the various stages of the Bill had been completed. ¹²²

The following day, Senator H.M.Basner presented a petition from Ahmed Ismail, President of the S.A.I.C., asking leave to be heard before the Bar of the Senate. ¹²³ Senator Clarkson thereupon withdrew the motion in his name to allow the S.A.I.C. to present its case. M.D. Barmania, the first non-European ever to appear in the Chamber of a South African House of Parliament, ¹²⁴ read the petition of the S.A.I.C.

119. Hansard, Debates of the House of Assembly, Vols.55-58, 2.4.1946, Cols.4844-4845; see also, The Rand Daily Mail, 3.4.1946; The Natal Daily News, 3.4.1946.

120. The Natal Mercury 18.4.1946.

121. The Rand Daily Mail, 18.4.1946.

122. The Natal Daily News, 29.4.1946.

123. Hansard, Debates of the Senate, 30.4.1946, Col.1265. The S.A.I.C. had earlier asked Mrs Ballinger to present their petition to the Bar of the House objecting to the Bill in the House of Assembly without success. A similar unsuccessful effort was made when the 'Pegging Act' was passed. See also, The Rand Daily Mail, 21.3.1946; The Natal Mercury, 21.3.1946. For a copy of the petition see, A1, Vol.164, No.41 (Smuts Archives, Public Papers), Petition by the Natal Indian Congress to Appear before the Bar of the House to plead their Cause, 26.3.1946.

124. The Natal Daily News, 3.5.1946. He was the first petitioner to be heard at the Bar of the House in 32 years and the second since Union. See also, The Rand Daily Mail, 4.5.1946; The Star, 3.5.1946; Indian Views, 8.5.1946, 1; The Forum (11.5.1946), (9), (6), 5.

Barmania reviewed the history of the Indians in South Africa. He outlined the numerous anti-Indian enactments affecting the Indian community and referred to the many disabilities suffered by Indians. He declared the Bill as being unacceptable to the Indians. The principle of segregation which constituted the basis of the Bill was repugnant to the Indian community. He concluded by urging the Senate not 'to give statutory recognition to what are private prejudices of a few Europeans with vested interests.' ¹²⁵

After Barmania had been ushered out of the Senate Chamber Clarkson proposed that the Bill be read a second time. The plea of the S.A.I.C. seemed to have made little impact on the Senate. Even Senator Brookes who was normally sympathetic towards the underdog in the country uncharacteristically chose to chide the Indian community for using 'intemperate and hysterical language'; for 'sending delegations to India and Great Britain'; and for appealing to 'UNO and to set South Africa before the Bar of the world'. ¹²⁶ Senator Shepstone also condemned the criticism levelled at the Government by the Indian leaders. ¹²⁷ Senator Basner seemed to be the only one totally opposed to the Bill in the Senate. He fearlessly advocated the Indian cause. According to him the underlying motive of the Bill was to keep the non-European people as helots in South Africa. ¹²⁸

125. Hansard, Debates of the Senate, 3.5.1946, Col.1454; see also, Khan, The Indian in South Africa, 557.

126. Hansard, Debates of the Senate, 8.5.1946, Col.1714-1715; see also above, Indian Views, 23.5.1946, 2, where Brookes was taken to task for his speech.

It is interesting to note that he had earlier informed Kajee that he was going to vote against the Bill. This made the tenor of his speech all the more difficult to understand.

See, I.A.P.(A.I.Kajee Correspondence, 4(a)), Kajee - Jalbhoy Rustomjee, 4.5.1946.

127. Hansard, Debates of the Senate, 8.5.1946, Col.1741.

128. Ibid., Col.1754. He tried unsuccessfully to delay the passage of the Bill through the Senate. See, Kajee - Jalbhoy Rustomjee, 4.5.1946.

The Senate proposed minor amendments to the Bill. It passed its Third Reading in the Senate on 2 May 1946 by 22 votes to 10.¹²⁹ It received the assent of the Governor-General on 3 June 1946¹³⁰ to become the Asiatic Land Tenure and Indian Representation Act, No.28 of 1946.¹³¹ The Act was divided into two sections: acquisition and occupation of fixed property; and, representation of Indians. The land tenure provisions were to come into effect immediately while the franchise provisions were to come into operation on a date to be determined by the Governor-General.

The land tenure provisions applied to Asiatics in the Transvaal and Natal. Natal was divided into 'controlled' and 'uncontrolled' (exempted) areas.¹³² In the latter no restrictions were placed on the acquisition or occupation of property by any race. A schedule of such areas was appended to the Act. In the former transactions of fixed property between Asiatics and non-Asiatics was prohibited, except under permit from the Minister of the Interior. The restrictions were retrospective from 21 January 1946.

129. The Natal Daily News, 24.5.1946.

130. The Rand Daily Mail, 4.6.1946; see also, The Natal Daily News, 3.6.1946; The Natal Mercury, 4.6.1946; The Natal Witness, 4.6.1946.

131. Union of South Africa, Government Gazette (Extraordinary), (6.6.1946), (CXLIV), (3660), xviii - lxi.

132. See, White, 'The Evolution of Policy, 1943-1948', Appendix 1X, 176. White's interpretation of 'controlled' areas as 'scheduled' or 'exempted' areas is incorrect. In terms of the definition of 'exempted' areas as contained in the Act, these areas were free of the restrictions of Sections 2,3 and 4, which referred to prohibition of transactions of fixed property between Asiatics and non-Asiatics. For further clarification see, D.G.Fannin, 'Indian Imbroglia: The Legal Position', Race Relations (1947), (XIV), (3), 116-117; G. Singh, The Asiatic Act..., 30-31; A Choudree and P.R.Pather, A Commentary on the Asiatic...Act..., 7.

A Land Tenure Advisory Board was appointed to advise the Minister in regard to the granting of permits as well as to declaring any area as an 'exempted' area; or excising areas; or any matter concerning acquisition or occupation of land referred to it by the Minister. The Board was to comprise not more than five members, two of whom may be Asiatics. The Minister was empowered to designate one of the members of the Board as Chairman.¹³³

Indians¹³⁴ from the Transvaal and Natal were to be represented in the Senate by two Senators; in the House of Assembly by three members;¹³⁵ and, in the Provincial Council of Natal by two members. The franchise was given only to Indian men who were Union nationals over the age of twenty-one years, with an educational qualification equivalent to Standard Six, an income of not less than £84 per annum, and who were registered owners of immovable property within the electoral division in question to the value of not less than £250 over and above any mortgage thereon.

133. Government Gazette (Extraordinary), (6.6.1946), (CXLIV), (3660), xxvi, section 10.

Section 10(2) does not lay down any special qualifications for the Chairman as suggested by White, 'The Evolution of Policy, 1943-1948', Appendix IX, 176.

134. Indians were defined in the Act as 'any member of a race or tribe whose national home is in India or Ceylon.'

135. As the qualifications for election as Senator or Member of Assembly was stipulated as those in terms of the South Africa Act only Europeans could be elected to represent Indians in Natal and the Transvaal.

See, D.G.Fannin, 'Indian Imbroglia: The Legal Position', 113.

Europeans in Natal accepted the land tenure portion of the Act with relief. Opinions on the franchise issue varied. Some regarded it as a liberal treatment of Indians because they were recognised as South African citizens with a new status.¹³⁶ This fact was given great prominence. Others, particularly in Natal, expressed misgiving that since representation had been granted to Indians in the Provincial Council the granting of municipal franchise was but the next step. They were totally opposed to such a franchise.

The Act had serious repercussions on the various political parties in South Africa. The right wing element of the parties were not amenable at all to granting the franchise to Indians. This explains why in addition to Indian opposition to the measure the representation aspect of the legislation was not immediately implemented. The Labour Party split on the issue. Madeley and others who were opposed to the granting of political rights were expelled from the party. It later reformed along more liberal lines. The Dominion Party similarly split. The liberal element was ejected and the Dominion Party changed its name to the South African Party. The split in the United Party was not so overt as the other two. But its supporters were very unhappy about the measure. The conservative and liberal elements maintained a precarious alliance. The only party benefitting from this political disarray was the Nationalist Party. They exploited the anti-Indian feeling and consolidated their position.¹³⁷

136. The Natal Daily News, 4.6.1946; see also, The Indian in South Africa, Pamphlet No.2, 'The So-Called "Ghetto" Act' (Durban, Durban City Council and the Durban Joint Wards Committee, n.d.); K.C.M.3638(53) (G.Heaton-Nicholls Papers), Heaton-Nicholls - Senator Richards, 25.7.1946; South African Government's Policy for Non-Europeans: Reply to Petition submitted to His Majesty the King (South Africa House, London, Public Relations Office, 1947), 7.

137. See, Carter, The Politics of Inequality, 36; A.Keppel-Jones, South Africa:A Short History(London, Hutchinson's University Library, n.d.), 199; D.Worrall(Ed.), South Africa:Government and Politics(Pretoria, J.L.van Schaik.Ltd.. Second Revised Edition

Indian reaction to the legislation was bitter. In terms of the S.A.I.C. resolutions adopted at its Conference in February 138 deputations were sent to India and to England. These deputations achieved their objective of gaining support for the Indian cause in South Africa by their vigorous campaigning.¹³⁹ In India leading politicians collaborated wholeheartedly with the deputation led by Sorabjee Rustomjee when he presented the S.A.I.C. resolutions to the Viceroy.¹⁴⁰ The leadership of the Indian National Congress among whom were such personalities as Gandhi ; Maulana Abdul Kalam Azad, Pandit Jawaharlal Nehru, Asaf Ali and Archarya Kripalani fully supported the deputation. The Indian Government gave effect to the S.A.I.C. resolutions without delay.

When Smuts commenced the debate on the Second Reading of the Asiatic Bill on 25 March 1946, the Government of India served the formal three months' notice on the Union Government to terminate the Trade Agreement between the two countries.¹⁴¹ On 17 July 1946 economic sanctions were instituted against South Africa by India.¹⁴² The High Commissioner

138. See above, 266, f/n. 92 and 93.

139. See, S. Rustomjee, Messages to the South African Indian Community from the Leaders of India (Durban, Mercantile Printing Works, 1946); see also, The Leader, 1.6.1946, 1; Indian Views, 29.5.1946, 3; The Natal Mercury, 23.5.1946.

140. I.A.P., Statement of S.A.I.C. Delegation to His Excellency Field Marshal The Right Honourable Viscount Wavell, Viceroy and Governor-General of India, Delhi, 12.3.1946.

The Indian politicians who associated themselves with the S.A.I.C. statement were:

Aga Khan, Leader of the Deputation; Sarat Chandra Bose, Leader of the Opposition, Indian Central Legislative Assembly; Mrs Sarojini Naidu, Representing the Indian National Congress; Homi P.Mody, Representing Imperial Indian Citizenship Association; M.H.Hasham Premji, President, Indian Merchants' Chamber, Bombay.

141. Khan, The Indian in South Africa, 497; see also, Lord Hailey, An African Survey, 396; R.Goold-Adams, 'South Africa and the Indians', The Nineteenth Century, (June 1947), (141), (844), 311.

142. The Natal Mercury, 19.7.1946.

was asked to return to India on 23 May 1946 for consultations with his Government and on 11 June 1946 the Government of India announced that 'in protest' against the Union's attitude regarding the Asiatic Act it was found necessary to recall the High Commissioner.¹⁴³ By this time India was on the verge of being granted her nationhood. As such she took advantage of her new position to focus the attention of the world on Indo-European relations in South Africa without sanction from London. On 16 April 1946 Ramaswami Mudaliar, Leader of the House in the Central Legislative Assembly, announced that the Government of India was to initiate steps to bring the issue of the oppression of the Indians in South Africa before the United Nations Organisation.¹⁴⁴

Kondapi does not exaggerate when he says 'Indians were struck with horror at the menacing provisions [of the legislation].'¹⁴⁵ From the outset the Indian community opposed the measure. The S.A.I.C. had granted the N.I.C. and the Transvaal Indian Congress the mandate 'to plan and prepare the details of a concerted and prolonged resistance' to the legislation at its Executive meeting on 24 March 1946.¹⁴⁶

143. The Natal Mercury, 12.6.1946; see also, The Leader, 15.6.1946, 1; Joshi, The Struggle for Equality, 91; A.Choudree, 'South African Indians Face Crisis', Newsindia (April 1946), (15), 8-9.

144. The Leader, 20.4.1946, 1; see also, The Natal Mercury, 30.4.1946; Walshe, The Rise of African Nationalism in South Africa, 330; H.Kuper, ' "Strangers" in Plural Societies: Asians in South Africa and Uganda', in L.Kuper and M.G.Smith (Eds.), Pluralism in Africa (Berkeley and Los Angeles, University of California Press, 1969), 262. For full text of Mudaliar's speech see, Khan, The Indian in South Africa, 549-550.

Note: Sastri declared from his sick-bed in reference to the Act: 'I cannot but think that this fact should be made known to the United Nations in its hellish character, and their intervention invoked in all solemnity.'

The Star, 26.3.1946; see also, The Natal Daily News, 26.3.1946; The Leader, 30.3.1946, 1.

145. Kondapi, Indians Overseas, 1838-1949, 274.

146. I.A.P., Press Statement issued by the President and Officials of the S.A.I.C. re Executive Meeting held on Sunday 24.3.1946, 26.3. 1946, Resolution No.6, 3; see also, I.A.P., 5 Months of Struggle: A brief account of the Passive Resistance Struggle from 13th June - 13th November 1946 (Durban, Joint Passive Resistance Council, 1946), 5.

The N.I.C. convened a special provincial conference on 30 March 1946 and resolved that as soon as the Bill became law resistance should begin. A Passive Resistance Council was appointed to conduct the struggle.¹⁴⁷ The following day some 6 000 Indians marched down West Street protesting against the legislation. A mass meeting endorsed the S.A.I.C. Executive resolution.¹⁴⁸ A fervent and emotional appeal was made to the Indian community stating, inter alia, that:

'Any Indian, man or woman, who serves on the Advisory Board, accepts the communal franchise or obstructs the struggle in any way whatsoever, will be guilty of an act of despicable treachery against his family, his community and the principles of democracy. Fellow Indians, forward to united action! Down with the Ghetto Bill! ' 149

147. Ibid., 5.

148. The Leader, 6.4.1946, 1; see also, Pahad, 'The Development of Indian Political Movements', 208; Minute and Agenda Book, N.I.C., 31.5.1947 - 1.6.1947, Secretarial Report, Annexure D, Resolution passed by Provincial Conference...30.3.1946 and by Mass Meeting... 31.3.1946; Pachai, 'Aliens in the Political Hierarchy', 47.

149. Minute and Agenda Book, N.I.C., 31.5.1947 - 1.6.1947, Secretarial Report, Annexure E, Appeal Passed by Provincial Conference... 30.3.1946 and by Mass Meeting...31.3.1946.

According to Dr Naicker this anti-Asiatic legislation came to be called The 'Ghetto Act' because: 'Its intention was...to force all Asiatics into certain areas, no matter what their numbers might become or the conditions in which they had to live, and keep them there.'

H.Gibbs, Twilight in South Africa(London, Jarrolds Publishers Limited, 1949), 121; see also, Y.M.Dadoo, The Indian People in South Africa: Facts about the Ghetto Act(Johannesburg, The Communist Party (Johannesburg District Committee), n.d.); Resist Indian Ghetto Act(Cape Town, Cape Passive Resistance Council, 1946), 2;

Mabel Palmer regards the term 'Ghetto Act' as a 'misnomer' and an 'exaggeration' because she maintained that although the conditions of Indians in Natal were bad, nothing like ghettos existed in South Africa. Palmer, The History of the Indians in Natal, 136.

Workers, businessmen and professionals unanimously demonstrated their abhorrence for the legislation and their commitment to the resistance struggle. The A.N.C. and the African Peoples' Organisation lent their support at the mass meeting.¹⁵⁰ On 7 April 1946 students of the Durban Indian Girls' High School, Sastri College and the Natal University College condemned the legislation and expressed their determination to support the N.I.C.¹⁵¹

On 2 June 1946 the 'Ghetto Act' became law. The N.I.C. declared 13 June as 'Hartal Day',¹⁵² as a mark of protest against the Asiatic Act.¹⁵³ This day also proclaimed the commencement of the third passive resistance campaign in South Africa.¹⁵⁴ It heralded a change from

150. See below, Chapter Eight, 311-313; also Pahad, 'The Development of Indian Political Movements', 209.

151. *Ibid.*, 210.

152. 'Hartal' means cessation of work; strike. See, M.K.Gandhi, Non-Violent Resistance (Satyagraha) (New York, Schocken Books, First Edition, Seventh Printing, 1972), vii.

153. The Leader, 8.6.1946, 1; see also, The Natal Mercury, 5.6.1946; 5 Months of Struggle, 5; The Natal Daily News, 4.6.1946.

154. Mahatma Gandhi started the first campaign on 9 May 1907 against the Transvaal Asiatic Law Amendment Act No.2/1907; the second campaign in July 1913 against the Immigrants' Regulations Bill of 1913. For further details see,

M.K.Gandhi, The Selected Works of Mahatma Gandhi: An Autobiography or The Story of My Experiments with Truth (Ahmedabad, Navajivan Publishing House, Vol.II, 1968), 474-475; M.K. Gandhi, The Selected Works of Mahatma Gandhi: Satyagraha in South Africa (Ahmedabad, Navajivan Publishing House, Vol.III, 1968); I.Narain, The Politics of Racialism: A Study of the Indian Minority in South Africa down to the Gandhi-Smuts Agreement (Agra, S.L.Agarwala and Co.(P.)Ltd., First Edition, 1962), 235-248; Pachai, The South African Indian Question, 37-65; B.Pachai, 'The History of the "Indian Opinion" 1903-1914', in Archives Year Book for South African History (Cape Town, Government Printer, 1963), 34-71; Meer, Portrait of Indian South Africans, 29; Johnson, 'Indians and Apartheid in South Africa', 34-43; F. Meer, Apprenticeship of a Mahatma (Phoenix, Natal, Phoenix Settlement Trust, 1970), 68-106; Souvenir of the Passive Resistance Movement in South Africa 1906-1914; Golden Number of Indian Opinion (Phoenix, Natal, Indian Opinion, 1914); H.S.L.Polak, H.N.Brailsford and Lord Pethick-Lawrence, Mahatma Gandhi (Bombay, Jaico Publishing House, 1962), 60-103.

compromise to decisive action in the Indian community's strategy in opposing the unjust laws in South Africa. The majority of Indians were positively against the 'Ghetto Act' as shown by the Indian community's total boycott of the Land Tenure Advisory Board, as established by the Act. There is no doubt that if any Indian had accepted an appointment to the Board he would have been ostracised by the community. In this regard the N.I.C. proudly informed the Commissioner for Immigration and Asiatic Affairs: '...there is not one Indian, representative of responsible opinion...who will allow us to submit his name to you for this purpose.'¹⁵⁵

The Asiatic Act was a hollow victory for Smuts. In the end it proved a source of much trouble for him as well as for South Africa.¹⁵⁶ When he introduced the Bill, he gave the impression that it was 'part of a grand design which represented his vision of the future' and as a 'majestic conception in the sphere of race relations'.¹⁵⁷ In real terms it was an apology to the world in vindication of his having bowed to White pressure especially from Natal.¹⁵⁸ Smuts probably assumed that the granting of political rights by way of a communal franchise would still keep him in the mainstream of western thought and culture. But the Act led to the demeaning of his international standing and the 'end of the great Smuts legend.'¹⁵⁹

155. The Natal Daily News, 6.6.1946; see also, The Natal Witness, 7.6.1946; The Leader, 8.6.1946, 2.

156. M.Ballinger, From Union to Apartheid. A Trek to Isolation (Cape Town, Juta and Co.,Ltd., 1969), 130; see also, G.M.Carter, 'The Discrimination Against Indians in South Africa', in A. Gyorgy and H.S.Gibbs(Eds.), Problems in International Relations (New Jersey, Prentice-Hall Inc., 1956), 185; Hancock, Smuts: The Fields of Force: 1919-1950, 466.

157. Friedman, Smuts: A Reappraisal, 172.

158. Karis and Carter(Eds.), From Protest to Challenge, Vol.2, 77.

159. Paton, Hofmeyr(Abridged Edition), 330.

The debates in Parliament during the various stages of the Bill showed that 'it was easy to set South Africa ablaze with prejudice.'¹⁶⁰ While the various parties were agreed on the control over land tenure, the divergence of opinion over the franchise clauses of the Act led to havoc in the Labour and Dominion Parties. The United Party did not escape unscathed. In Natal particularly Smuts lost many supporters.

By the time the Asiatic legislation had become law the N.I.C. as well as the S.A.I.C. had changed its orientation from 'caution to militancy'.¹⁶¹ The Kajee-Pather Group representing the accommodationist element was replaced by the radical group led by Dr Naicker. The latter group condemned the land tenure provisions of the Act as 'a diabolic attempt to strangle the Indians economically and degrade them socially' while they rejected the political clauses as 'a spurious offer of a sham franchise.'¹⁶²

The Asiatic Act of 1946 was the first general provision for compulsory segregation of Indians throughout Natal and as such was repugnant to the conditions under which Indian indentured immigrants came to Natal.¹⁶³ Asiatics were prevented from purchasing property in controlled areas not only from Europeans but from anybody who was not an Asiatic. Although the Minister was empowered to grant permits he was under injunction to do so only in special circumstances which had to be thoroughly investigated by a Land Tenure Advisory Board.

160. Joshi, The Struggle for Equality, 101.

161. T.Karis, 'South Africa', in G.M.Carter(Ed.), Five African States: Responses to Diversity(London, Pall Mall Press, 1964), 536; see also, E.Roux, Time Longer than Rope(London, Victor Gollancz Ltd., 1948), 367-368.

162. Krüger, The Making of a Nation, 227; see also, L.De Villiers, South Africa Drawn in Colour, 107.

163. Palmer, The History of the Indians in Natal, 138; see also, L.Kuper et al., Durban: A Study in Racial Ecology, 29; M. Kumaramangalam, Indians fight for Equality in South Africa (Bombay, People's Publishing House, 1946), 10-11; A. Choudree and P.R.Pather, A Commentary on the Asiatic...Act..., 8.

Much was made of the fact that the franchise by implication recognised Indians as South African citizens.¹⁶⁴ But the Indian community rejected it as a parody of representation and it was never implemented. Eventually it was withdrawn by the Nationalist Government under Dr D.F.Malan in 1948.

The appeal of the Indian community to the Government of India did not go unanswered. Smuts had refused to implement the recommendation by the Broome Commission to convene a round table conference between the Governments of India and the Union. Consequently the Trade Agreement between the two countries was terminated, economic sanctions were imposed on South Africa by India; diplomatic relations were severed and India took the matter to the forum of the UNO. The White press in South Africa showed little concern over this breakdown in relations between South Africa and India. They casually dismissed it as 'an inevitable outcome of the events in South Africa.'¹⁶⁵ But with these developments began South Africa's isolation.

The 'Ghetto Act' was Smuts's attempt 'to appease and conciliate the Jingo Imperialist elements of Durban and the rest of Natal.'¹⁶⁶ Smuts certainly made an effort to accommodate the Indians by offering them the communal franchise but this was done only to placate world opinion that Indians were being given Parliamentary representation. But

164. Palmer, The History of the Indians in Natal, 138; see also, W. Warmington, Asiatic Land Tenure and Indian Representation Act; an Appeal to the Europeans of South Africa (Durban, Council of Human Rights, n.d.), 7.

165. Joshi, The Struggle for Equality, 91-92.

166. Y.M.Dadoo, You and the Indians (Johannesburg, Transvaal Indian Congress, n.d.), 2; see also, M.Benson, The African Patriots: The Story of the African National Congress of South Africa (London, Faber and Faber, 1963), 119.

in fact his endeavour boomeranged: it contributed to his defeat; it solved nothing and annoyed all; finally it took him to the United Nations. ¹⁶⁷ For the Indian community 'the "Ghetto Act" was indisputably a climax of humiliation...' ¹⁶⁸ It vigorously opposed the legislation and attempted to redeem itself by focussing attention on Indian disabilities by resorting to passive resistance. This will be discussed in the next chapter.

167. D.Coger, 'The International Politics of Apartheid:South Africa and the United Nations, 1945-1962'(University of South Carolina, Unpublished Ph.D. thesis, 1970), 79.

168. P.S.Joshi,Unrest in South Africa(Bombay, Hind Kitabs Limited, 1958), 104.

CHAPTER EIGHT

COMPROMISE TURNS TO CONFRONTATION -

THE PASSIVE RESISTANCE CAMPAIGN OF 1946

The concepts of passive resistance and Satyagraha are sometimes used loosely as interchangeable terms. But according to Gandhi 'Satyagraha differs from Passive Resistance as the North Pole from the South'.¹ Gandhi defined Satyagraha as 'a weapon of the strongest and excludes the use of violence in any shape or form' whereas passive resistance 'has been conceived as a weapon of the weak and does not exclude the use of physical force or violence for the purpose of gaining one's end.'² Literally Satyagraha means holding on to truth, becoming truth-force. As 'truth is soul or spirit' it is known as 'soul-force'.³ Gandhi distinguished further between these two concepts: there is no scope for love in passive resistance; hatred is a positive breach in the ruling principle of Satyagraha; passive resistance allows for use of arms when a suitable occasion arises, whereas physical force is forbidden in Satyagraha at all times; passive resistance is often looked upon as preparatory to the use of force while Satyagraha eschews this altogether; passive resistance may be offered together with the use of arms, Satyagraha is the very antithesis of brute force and cannot exist with such force side by side; Satyagraha may be offered to those closest to

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1. M.K.Gandhi, The Selected Works of Mahatma Gandhi: The Voice of Truth (Ahmedabad, Navajivan Publishing House, Vol.VI, 1968), 179.
 2. Ibid., 179.
 3. M.K.Gandhi, Non-Violent Resistance (Satyagraha), 2.

one, passive resistance can only be offered to them if we cease to love them; in passive resistance there is always present an idea of harassing the opposition and a simultaneous readiness to undergo any hardships entailed upon us by such activity, while in Satyagraha there is no intention whatsoever to injure the opponent; finally, Satyagraha postulates the conquest of the adversary in one's own person. ⁴

It is important to note that Gandhi outlined the 'implications of Satyagraha and characteristics of Satyagrahis as they ought to be.' ⁵ Many who called themselves Satyagrahis were utter strangers to the essence of Satyagraha. In the South African context during 1946 and the subsequent years some resisters exhibited the characteristics demanded of a Satyagrahi while others by their emotive language and action engendered and perpetuated antipathy towards the authorities. In accordance with

4. M.K.Gandhi, Satyagraha in South Africa, Vol III, 156-157.

5. Ibid., 158. For further clarification see, M.K.Gandhi, An Autobiography or The Story of My Experiments with Truth, Vol II, 474-475; M.K.Gandhi, Hind Swaraj or Indian Home Rule (Ahmedabad, Navajivan Press, 1938), 117-135; M.K.Gandhi, Young India, 1919-1922 (Madras, S.Ganesan, 1922), 11-65; M.K.Gandhi, 'The Theory and Practice of Passive Resistance', in Souvenir of the Passive Resistance Movement in South Africa 1906-1914, Golden Number of Indian Opinion, 9; T.A.Raman, What does Gandhi Want? (London, Oxford University Press, 1943), 101-103; R.B.Gregg, The Power of Non-Violence (Ahmedabad, Navajivan Publishing House, 1949); E.S.Jones, Mahatma Gandhi: An Interpretation (London, Hodder and Stoughton, 1948), 108-140; D.A.Van Zyl, 'Gandhi in Natal - From Organized Opposition to Mass Civil Disobedience' (University of Natal, Durban, B.A.(Hons) Thesis, 1980), 45-48; C.Heath, Gandhi (London, George Allen and Unwin, Ltd., 1944), 17-20; M.S.Maurice, The Ethics of Passive Resistance (Phoenix, Natal, International Printing Press, 1908), 3-26.

Gandhi's delicate distinction between Satyagraha and passive resistance, Billy Peters describes the campaign in Durban in 1946 as passive resistance rather than Satyagraha.⁶

The first two passive resistance campaigns have been fairly thoroughly researched⁷ but the campaign of 1946-1948 has not been examined in any great detail. Pachai makes a very brief reference to the campaign maintaining that the 'significance of the resistance struggle could not be localised.'⁸ Quoting Calpin⁹ he states that the campaign was an embarrassment to the Government and particularly to Smuts. It also provided material for propaganda overseas especially in England and the United States. While Pachai is correct that the campaign had significance on the international plane, the importance of the movement at a local level cannot be ignored: the campaign was a barometer of the Indian opposition to anti-Asiatic legislation; it galvanised the Indian community into taking unified action on a national basis rather than to resort to a compromise for sectarian interests; the initial response to the campaign was the community's acceptance of the opposition of the radical leadership. Above all it served as an example for similar action among the Blacks and Coloureds and set the stage for closer unity among all non-Europeans in the country.¹⁰

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6. Interview with Billy Peters, Durban, 8.9.1983. He was an active member of the N.I.C. and a passive resister. Most of those who were interviewed by the author expressed a similar opinion.
 7. See above, Chapter Seven, 283, f/n. 154.
 8. Pachai, The South African Indian Question, 191; see also, Pachai, 'Aliens in the Political Hierarchy', 47.
 9. Calpin, Indians in South Africa, 243.
 10. Minute and Agenda Book, N.I.C., 31.5.1947 - 1.6.1947, Passive Resistance Council of the Natal Indian Congress, Report on Passive Resistance 13th June 1946 - 13th May 1947 submitted to Natal Indian Congress Provincial Conference 31.5.1947, 2-3.

Johnson's primary concern was the Indian response to the policy of apartheid in South Africa. He therefore refers rather broadly to the passive resistance campaign of 1946¹¹ and concludes that the campaign was a failure. He briefly analyses the reasons which contributed to the lack of success of the campaign.

Pahad and White are the only commentators who have given details of the campaign itself. However, Pahad referred to few primary source materials in his study of the campaign and he concentrated mainly on the activities in the Transvaal.¹² Pahad had had the obvious advantage over White in being able to consult with members of his own family who were passive resisters as well as being in contact with Dr Y.M.Dadoo, one of the key figures with Dr G.M.Naicker in the whole struggle. In order to maintain chronology White has, inter alia, dealt with the closer unity movement of the N.I.C. and the A.N.C., S.A.I.C. overtures to Smuts to convene a round table conference with the Government of India, Smuts's confrontation with India at the UNO and the passive resistance campaign concurrently.¹³ As a result he has referred mainly to the highlights of the campaign. In order to appreciate the full impact of the campaign, particularly in Durban, we need to examine the details relating to the passive resistance campaign in 1946 more closely than has been done hitherto.

11. Johnson, 'Indians and Apartheid in South Africa', 74-82.

12. Pahad, 'The Development of Indian Political Movements', 212-217.

13. White, 'The Evolution of Policy, 1943-1948', 99-113; 125-133; 135-136; 143; see also, W.B.White, 'Passive Resistance in Natal, 1946-1948', Journal of Natal and Zulu History, (1982), (V), 1-28.

This article is an adaptation of the relevant chapters of his M.A. thesis.

The author has in his possession documents and reports ¹⁴ related to the 1946 campaign which have not been consulted by previous researchers in this field. He has also interviewed some of the few surviving individuals who participated actively in the movement as well as others who have a good knowledge of this period. Such evidence has contributed immensely to a better understanding of the problems surrounding the passive resistance campaign and Indo-European relations in Durban at the time.

At its Provincial Conference on 30 March 1946 the N.I.C. had resolved to give effect to the resolution of the S.A.I.C. Conference held in February 1946 and the Executive meeting of the S.A.I.C. on 24 March 1946 to launch a passive resistance campaign. A council of 25 members to be known as the Passive Resistance Council was formed.¹⁵ It was decided that only passive resistance volunteers should be eligible for the Council. It was considered unethical for non-volunteers to court imprisonment.¹⁶ By 6 May 1946 only eleven volunteers had come forward.¹⁷

14. For example, Flash Special, Vols. 1-4, Nos. 1-100, 21.6.1946 - 26.7.1946, issued by the Passive Resistance Council of the N.I.C. These were cyclostyled bulletins giving a daily record of the prevailing situation at the height of the campaign; the D.C.C., T.C.O. papers on the campaign; various Reports of the Passive Resistance Council; The Passive Resister, and so on.

15. Minute and Agenda Book, N.I.C. 31.5.1947 - 1.6.1947, Secretarial Report, Annexure D, Resolution passed by Provincial Conference... 30.3.1946 and by Mass Meeting...31.3.1946; see also, Report on Passive Resistance, 13.6.1946 - 13.5.1947, 7.

16. I.A.P., Report of the N.I.C. Resistance Campaign in Natal submitted to the S.A.I.C., 21.7.1946, 2.

The Council was to organise a volunteer corps of a substantial number to conduct the struggle; to launch a fighting fund; to commence the struggle at an opportune moment and in a manner deemed advisable. Report on Passive Resistance, 13.6.1946 - 13.5.1947, 7.

17. These were Dr G.M.Naicker(Chairman), Messrs M.D.Naidoo, A.E.Patel (Treasurer), S.V.Reddy, H.A.Seedat, R.G.Pillay, M.P.Naicker, P.B.A. Reddy, M.Moodliar, R.A.Pillay, Debi Singh(Secretary).

Ibid., 8.

The Ghetto Bill is now Law !

INDIANS!

**THURSDAY, 13TH JUNE
IS
"RESISTANCE DAY"**

.....

The Joint Passive Resistance Council of the Natal and Transvaal Indian Congresses has declared THURSDAY, 13th JUNE, "Resistance Day," to mark the beginning of resistance against the Ghetto Act. The Indian community is expected to observe this day as a Day of Hartal.

All Indian businessmen are requested to close their shops, offices, factories and other businesses for the whole day on June 13th.

All Indian parents are requested **NOT** to send their children to school on this day.

All Indian workers, whose employers do not close their businesses, are asked to **REMAIN AT WORK**.

ATTEND

MASS MEETING

RED SQUARE - 5.30 P.M.

ON

"RESISTANCE DAY"

Square will be floodlit.

Seats provided for Ladies.

Issued by PASSIVE RESISTANCE COUNCIL of NATAL INDIAN CONGRESS

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On 21 April 1946 at a mass meeting in Johannesburg the T.I.C. set up a similar Passive Resistance Council. Shortly thereafter a Joint Council was set up to meet regularly and give direction to the entire resistance campaign.¹⁸ Resistance Councils were also set up in the Cape Province: in Cape Town, under the guidance of Mrs Z.Gool, Sundra Pillay and Cassim Amra; in Port Elizabeth, led by M.M.Desai, V.K.Moodley and Dr S.V.Appavoo; in East London, with Dr N.V.Appavoo, O.Jonathan and R.Harry as leaders.¹⁹ The Cape was not affected by the provisions of the 'Ghetto Act' or other anti-Asiatic legislation. But the Indian community of the Cape wished to identify with their compatriots in the Transvaal and Natal in their opposition to the Asiatic Act.

Thursday, 13 June 1946, 'Hartal Day', marked the beginning of the passive resistance campaign.²⁰ The Joint Passive Resistance Council requested Indian businessmen to close their shops, offices, factories and other businesses; parents were requested not to send their children to school. Workers who were not granted leave were told to remain at work and not risk their jobs. A mass meeting was scheduled at 'Red Square' at half-past five in the afternoon.

On 'Hartal Day' Indians demonstrated against the 'pain' and 'rule of tyranny' to which they were subjected in the land of their birth. In Durban there was overwhelming support for the N.I.C. call. 'Durban was dead on Thursday,' declared The Leader.²¹ Most Indian merchants and factories closed their businesses. Not a single student turned up at the

18. The Leader, 18.5.1946, 1; see also, Indian Views, 22.5.1946, 5; Calpin, Indians in South Africa, 241; M.Horrell, Action, Reaction and Counter-Action (Johannesburg, SAIRR, 1971), 16.

19. Report on Passive Resistance, 13.6.1946 - 13.5.1947, 10.

20. See above, Chapter Seven, 283, f/n.152; see also, G. Singh, The Asiatic Act..., 5.

21. The Leader, 15.6.1946, 1; see also, The Natal Mercury, 14.6.1946.

Sastri College, while at the Durban Indian Girls' High School, the few girls who attended did not warrant the opening of the school. Similarly poor attendance at other schools forced their closure for the day.²² In the areas outside Durban, such as Stanger, Greytown and Pietermaritzburg the response was half-hearted while in Ladysmith, Dundee and Estcourt hardly any attention was paid to the call for a 'Hartal'.²³ The Passive Resistance Council was not despondent for by and large the response in Durban and the Transvaal meant 'that Hartal Day had been an unqualified success...'.²⁴

The 'Hartal Day' culminated in an historical mass meeting of over 15 000 people at the 'Red Square' in Durban.²⁵ Thereafter, a little before eight o'clock in the evening a picked squad of volunteers under the leadership of Dr Naicker and M.D.Naidoo marched to the intersection of Umbilo Road and Gale Street (Gale Place end) and pitched tents on a vacant piece of municipal land. This marked the beginning

22. The Leader, 15.6.1946, 1.

23. White, 'Passive Resistance', 5.

24. The Natal Daily News, 14.6.1946; see also, Ibid., Editorial comment on the significance of the 'Resistance Day'.

25. Interview with Rungasamy Gopaul Pillay, Durban, 13.9.1983. He was a member of the Passive Resistance Council and took an active part in the campaign as a resister. He was imprisoned several times. See also, Report on Passive Resistance, 13.6.1946 - 13.5.1947, 10; N.A., Vol.72, File 527(E)(1) (D.C.C., T.C.O.), The Town Clerk, Durban - The Joint Secretaries, N.I.C. 6.6.1946 and Major Keevy, District Commandant of the South African Police, Durban - The Town Clerk, Durban, 5.6.1946, where permission was granted for the holding of the meeting.

of the passive resistance struggle.²⁶ Earlier in the day a group of Indian women had defied inter-provincial restrictions between Natal and the Transvaal. They had boarded the fast mail train on Wednesday and arrived in Durban at nine o'clock in the morning on Thursday. They had not applied for permits. Such action constituted the first violation of laws in the commencement of the passive resistance struggle.²⁷

Dr Naicker emphasised the fact that he wished to model the campaign on Gandhi's philosophy of Satyagraha. He thanked European well-wishers who were sympathetic to the Indian cause and appealed to the Indian community for co-operation. He stated unequivocally that the 'struggle would be probably a very long one and would involve an enormous amount of suffering and sacrifice and money.'²⁸ He was right.

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26. The Leader 15.6.1946, 1; see also, The Natal Daily News, 14.6.1946; The Natal Mercury, 14.6.1946; G.M.Carter, Which way is South Africa Going? (Bloomington, Indiana University Press, 1980), 81; Calpin, Indians in South Africa, 241-242; Roux, Time Longer than Rope, 373. The Resisters encamped at 'Resistance Plot' were: Mrs Luxmi Govender, Mrs Veerama Pather (who had taken part in the Natal protests under Gandhi), Miss Zaynap Asvat, Miss Zohra Bhayat, Mrs Amina Pahad, Mrs Zubeida Patel, Mrs Nayagar, Mrs Chella Pillay, Dr G.M.Naicker, Messrs M.D.Naidoo, R.J.Premalall, R.A.Pillay, V. Patrick, Shaik Mahomed, M.N.Govender, P.Poonsamy, V.S.Chetty, T.J.Vasie, Abbai Soobramoney, S. Abdool Kader. N.A., Vol. 72, File 527(E)(1) (D.C.C., T.C.O.), G.T.Hesom, Staff-Sergeant - Chief Constable, Durban City Police, 14.6.1946; see also, Report on Passive Resistance, 13.6.1946 - 13.5.1947, 11.
27. The Leader, 15.6.1946, 1. The women were: Mrs Meenatchie Sigamoney Nayagar, Mrs Zohra Bayat, Miss Zaynap Asvat, Mrs Amina Pahad, Mrs Zubeida Patel and Mrs Chella Pillay; see also, The Natal Daily News, 13.6.1946 and 14.6.1946; Pahad, 'The Development of Indian Political Movements', 213; White, 'Passive Resistance', 5.
28. The Leader, 15.6.1946, 5. Douglas Mitchell was of the opinion that the campaign would be terminated in a short time. K.C.M.3638 (69) (G.Heaton-Nicholls Papers), Mitchell - Heaton-Nicholls, 22.6.1946.

The N.I.C. strategy in occupying the 'Resistance Plot' was to 'force the arrest of numerous resisters for violating the Land Tenure Act...' ²⁹ J.N.Singh maintains that the most important reason for the campaign was to '...put up a struggle here in South Africa to show the world and to show South Africa itself that the Indian people were not going to take it lying down while their rights were being whittled away.'³⁰ Although it was known that the passive resisters were trespassing³¹ the D.C.C. and the police acted cautiously. They refrained initially from prosecuting the passive resisters as the issue was being treated as a political and not a criminal matter.

On 16 June 1946 the passive resistance campaign was given a fillip when a band of European hooligans raided the camps of the resisters and continued harassing them until 24 June. ³² On the first two nights the culprits cut ropes and removed tent pegs and also hurled a barrage of threats and abuse. On the third night they became bolder and 'made a

29. Johnson, 'Indians and Apartheid in South Africa', 76.

30. Interview with Jaydew Nasib Singh, Durban, 8.9.1983.

He played an active part in the Transvaal Indian Congress and later in the N.I.C. when he was deported from the Transvaal in terms of the Immigrants' Regulations Act, 1913. He is a semi-retired attorney. He had worked closely with Drs Naicker and Dadoo and went to jail several times as a passive resister. With I.C.Meer he started the publication of The Passive Resister. He is held in high esteem by Indians, Coloureds and Blacks for the numerous sacrifices he made in the struggle for the basic human rights for all non-White South Africans.

31. N.A., Vol. 72, File 527(E)(1)(D.C.C., T.C.O.), City Valuator and Estates Manager - The Town Clerk, Durban, 15.6.1946.

32. Report on Passive Resistance, 13.6.1946 - 13.5.1947, 11; see also, The Natal Mercury, 17.6.1946; E.Roux, 'Indian Passive Resistance in South Africa', Trek, 28.6.1946, 13-14; Durban, (S.S.Singh Papers, Uncatalogued), V.Naicker, We shall Resist (An Anthology of Poems on the Passive Resisters and the attacks on them at Umbilo Road - Gale Street camp); UNISA, Accession 105, 16.2.5.

concerted rush at the tents, pulled them down in a wild paroxysm of fury, and tore them to tatters.' ³³ Two women passive resisters were hurt. The attacks continued nightly and while the police were present they made no attempt to arrest the youths. ³⁴ By the 23 June 1946 the attacks on the resisters were becoming more brutal and many of them had to be taken to hospital for treatment. ³⁵ Other acts of hooliganism included: stoning and burning of cars; ³⁶ White youths molesting and chasing individual Indians; catcalls and boos directed at the police. ³⁷

The most tragic act of all was the wanton attack by a group of Europeans on an Indian policeman, Krishnasamy Pillay. ³⁸ He later died from his wounds in hospital. Dhanpal Naidoo who was responsible for Pillay's funeral arrangements is of the opinion that it was the largest funeral Durban had ever seen at the time 'with no space in Grey Street anywhere.' ³⁹ The Indian community had identified with the N.I.C. struggle in a positive manner.

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- 33. Indian Views, 19.6.1946, 2; see also, Swami B. Dayal (Sannyasi), 'South Africa and U.N.O.', The Pravasi, (January 1948), (1), (3), 3; F. Troup, In Face of Fear: Michael Scott's Challenge to South Africa (London, Faber and Faber Limited, 1950), 129 -130.
 - 34. The Leader, 22.6.1946, 1, Report by Dr G.M.Naicker; see also, The Natal Mercury, 18.6.1946; The Indian Views, 19.6.1946, 2.
 - 35. The Natal Mercury, 24.6.1946; see also, Flash Special, Vol.1, Nos. 8-11, 23.6.1946.
 - 36. N.A., Vol.72, File 527(E)(1)(D.C.C., T.C.O.), H.Harrison (P.C.49) - The Chief Constable, Durban, 19.6.1946; see also, 5 Months of Struggle, 6.
 - 37. The Natal Mercury, 20.6.1946.
 - 38. Indian Views, Editorial, 3.7.1946, 2; see also, Troup, In Face of Fear, 130; Flash Special, Vol.2, No.49, 1.7.1946.
 - 39. Interview with Dhanpal Naidoo, Durban, 6.9.1983. He was closely associated with the N.I.C.

'RESISTANCE' CAMP ATTACKED.

**Misguided European Youths take Law
into their own hands.**

TENTS PULLED DOWN.

**Miss Zaynap Asvat & Mrs. Veerama Pather
hurt.**

**This well-organised squad of about 40 strapping European
youths, threatened to come again and drive the
'Passive Resisters' from Resistance' Camp.**

MASS MEETING

WILL BE HELD AT

"RESISTANCE CAMP"

(Corner of Umbilo Road and Gale Street)

**This Evening MONDAY, 17th JUNE,
1946, at 5.45 p.m.**

It is the plain duty of every Indian to be present.

Issued by the Passive Resistance Council of the N. I. C.

The Deputy-Commissioner of Police, Lt.Col.T.C.van Rooyen and the Attorney-General for Natal, Mr.W.J.McKenzie, K.C., appealed to the European community to allow the police to handle the delicate issue and 'refrain from taking unconsidered action.'⁴⁰ A similar appeal was made by Senator S.J. Smith, the Mayor of Durban. He maintained that the Europeans creating disturbances at the passive resisters' camp were in fact contributing to the success of the campaign.⁴¹ There was a great deal of truth in that statement. The resisters were earlier perturbed that they were not being arrested for having occupied a property in a controlled area in defiance of the Asiatic Act.

The raids helped the movement. Dr Naicker stated: 'The battle has begun and we are face to face with the forces of prejudice and intolerance. We propose to win them over and make them see the justice of our cause by our suffering and sacrifice, not by hatred or malice. That is why we refuse to retaliate...'⁴² On 21 June 1946 the D.C.C. acted. 'Trespassers Will Be Prosecuted' signs were put up on the 'passive resistance plot'. Notices of trespassing in terms of Section 1 of Law No.13/1874, a 72 year-old Natal law, were served on the passive resisters individually.⁴³ This strategy was adopted because 'the Government did not wish to take any legal action under the Asiatic Land Tenure Act against the parties concerned...'⁴⁴ The Government resorted to this ruse to avoid exposing itself to further criticism in regard to the Asiatic Act and wanted as little confrontation as possible.⁴⁵

40. The Natal Mercury, 21.6.1946.

41. Ibid., see also, The Leader, 22.6.1946, 3.

42. The Natal Daily News, 19.6.1946.

43. N.A., Vol.72, File 527(E)(1) (D.C.C., T.C.O.), The Town Clerk, Durban - Miss Zainab [sic] Asvat [and others, individually], 21.6.1946.

44. N.A., Vol.72, File 527(E)(1) (D.C.C., T.C.O.), Mayor [of Durban] - Deputy Commissioner, South African Police, 22.6.1946.

45. Interview with George Singh, Durban, 8.9.1983.

The first group of passive resisters from the Umbilo Road - Gale Street camp was arrested on the evening of 21 June 1946.⁴⁶ They appeared in the Durban Magistrate's Court on a charge of trespassing.⁴⁷ In a statement which was excluded from the records Dr Naicker emphasised the fact that because the Asiatic Act was 'objectionable and inhuman' the Government had avoided 'the real issue' and adopted 'a weak subterfuge' using a 72 year-old law to prosecute the resisters.⁴⁸ The magistrate ruled that Dr Naicker and M.D.Naidoo would come up for sentence on 22 July. The others were cautioned and discharged.

The camp was reoccupied on 22 June.⁴⁹ By eight o'clock that night the whole group had been re-arrested⁵⁰ including the Rev.Michael Scott, an Anglican Priest, who was identifying with the struggle of the Indians. The camp was then occupied by a group led by Dr K.Goonam, the first Indian woman in South Africa to qualify as a doctor. They were also arrested that night at about ten o'clock.⁵¹ Amongst the second group was another European sympathiser, B.Sischy.

46. Flash Special, Vol.1, 21.6.1946; see also, 5 Months of Struggle, 6.

47. 13 Passive resisters appeared before Mr L.T.Cohen:

Dr G.M.Naicker, M.D.Naidoo, M.H.Govender, V.S.Chetty, Lutchmee Govender, R.J.Premalall, Z.Asvat, Rungasamy Aranajalam(Pillay), T.Vasi, V.Patrick, S.Mahomed,P.Perumal, J.Bhaba.

The Natal Mercury, 22.6.1946; see also, The Natal Daily News, 22.6.1946.

48. Indian Views, 26.6.1946, 5.

49. Flash Special, Vol.1,No.2, 22.6.1946; see also, Flash Special, Vol.1,No.3, 22.6.1946.

50. N.A.,Vol.72,File 527(E)(1) (D.C.C.,T.C.O.), R.Brickhill (P.C.10) - The Chief Constable, Durban, 22.6.1946.

51. Ibid.; see also, Flash Special, Vol.1, Nos.4-5, 22.6.1946.

By 24 June 1946 ten batches of resisters were arrested.⁵² With the attacks by White youths increasing, the District Commandant, Major J.M.Keevy, announced that gatherings in the vicinity of the passive resistance camp were prohibited in terms of Section 1(4) of the Riotous Assemblies Act, No.27 of 1914, as amended.⁵³ This now provided the authorities with two strings to their legal bow to remove the passive resisters from their camp. That same evening a group of 47 resisters was arrested under the Riotous Assemblies Act.⁵⁴

The cycle of arrests and occupation of the passive resisters' camp continued unabated. No one was sent to prison until 27 June 1946 when Drs Dadoo and Naicker were sentenced to three months' and six months' imprisonment with hard labour respectively in terms of the Riotous Assemblies Act.⁵⁵ They were followed by M.D.Naidoo, six months and a week with hard labour; Dr K.Goonam, six months and a week of which four months were suspended; R.A.Pillay, three months with hard labour and Sorabjee Rustomjee, three months with hard labour.⁵⁶

The authorities attempted to defuse the situation by imprisoning the leaders. It had become apparent that there would have been a tremendous international backlash if the masses were imprisoned.⁵⁷ In order to dis-

52. Flash Special, Vol.1, No.10, 24.6.1946.

53. The Natal Mercury, 25.6.1946.

54. Flash Special, Vol.1, No.16, 24.6.1946; see also, Indian Views, 26.6.1946, 3; The Natal Mercury, 25.6.1946.

55. Flash Special, Vol.2, Nos. 29-30, 27.6.1946; see also, The Natal Mercury, 28.6.1946; The Natal Daily News, 27.6.1946.

56. The Leader, 6.7.1946, 1; see also, The Natal Daily News, 28.6.1946 and 2.7.1946; Flash Special, Vol.2, Nos. 33(28.6.1946); 38(29.6.1946); 40(29.6.1946); 50(2.7.1946).

57. White, 'Passive Resistance', 6; see also, Flash Special, Vol.2, No.43, 30.6.1946.

courage the masses from courting arrest the authorities imposed a fine of £5 without the option of imprisonment. The resisters were warned that if the fines were not paid their properties would be attached and sold under auction which was a stringent test for the passive resisters. Not a single resister paid his fine.⁵⁸ A few properties were sold in terms of the Court's ruling. The practice was soon stopped and resisters were once more sentenced to terms of imprisonment. These arrests and imprisonment of the leaders acted as a spur rather than a deterrent to the movement. On 11 July 1946 a 'second front' was created when ten passive resisters pitched a tent at the corner of Walter Gilbert and Umgeni Roads.⁵⁹ The group was arrested. But as the land belonged to the St Joseph's Youth Club it was not reoccupied because the policy of the resisters was to occupy government or municipal land.⁶⁰

At a mass meeting on 19 August 1946 Mr Debi Singh, Chairman of the Passive Resistance Council, stated that the second phase of the campaign was to commence: at the end of the meeting George Singh and four other resisters were going to occupy a vacant site in Brighton Road, Wentworth.⁶¹ This gave the campaign a new dimension. Indians were now contravening the proclamation of the Governor-General prohibiting the occupation of vacant land in a controlled area by Asiatics except under permit from the Minister.⁶² Soon after on 1 September Mr Rugnath Singh and his family

58. Flash Special, Vol.2, No.46, 1.7.1946; see also, The Natal Daily News, 1.7.1946.

59. The Natal Daily News, 11.7.1946.

60. The Natal Mercury, 13.7.1946.

61. The Natal Mercury, 20.8.1946; see also, The Natal Daily News, 19.8.1946; 5 Months of Struggle, 7.

62. This was in terms of Section 4 of the Asiatic Land Tenure and Indian Representation Act No.28 of 1946.

occupied premises in Merebank/Wentworth which was a controlled area.⁶³ No action was taken against either Rugnath Singh or George Singh. In the case of the latter, the Attorney-General deemed the occupation of the property as legal since George Singh was the owner of the property at the date when the Asiatic Act became effective. As the authorities showed no interest in the camp at Brighton Road it was abandoned after some two months.⁶⁴

The Passive Resistance Council appealed to the Indian community 'to hold demonstrations throughout the country on October 23rd to show their unanimous condemnation of the Asiatic Land Tenure and Indian Representation Act.'⁶⁵ This was the proposed date for the meeting of the United Nations General Assembly. Such a demonstration would signify the commencement of the third phase of the passive resistance campaign.⁶⁶ An appeal was also made to Indians in East Africa, Europe, America and Rhodesia to hold similar meetings in protest against the 'Ghetto Act'.

On Wednesday, 23 October 1946, a massive campaign was organised in Durban to coincide as planned with the opening of the General Assembly.⁶⁷ The passive resisters occupied their 'resistance camp' at Umbilo Road - Gale Street. And once more they were arrested. Several thousands of Europeans and non-Europeans witnessed one of the largest mass arrests to take place in the Union when 358 passive resisters were

63. The Leader, 7.9.1946; see also, 5 Months of Struggle, 7; Report on Passive Resistance, 13.6.1946 - 13.5.1947, 12.

64. Ibid., 12. George Singh is of the opinion that the Minister wanted to avoid publicity regarding the Act. Interview with George Singh, Durban, 8.9.1983.

65. The Passive Resister, 21.10.1946(1), (17), 1.

66. The Natal Mercury, 9.9.1946.

67. The Leader, 26.10.1946, 5.

arrested.⁶⁸ 324 of those arrested appeared in the Durban Magistrate's Court. Among them were Indians from Pretoria, Cape Town, Mafeking, Witwatersrand, Blacks and two Europeans,⁶⁹ one of whom was the well-known Mission priest in Durban, the Rev.W.H.Satchell. Manilall Gandhi, son of Mahatma Gandhi, was another well known personality who was arrested. These arrests brought the total number since the campaign started on 13 June to 1310.⁷⁰ 147 of those arrested on 23 October admitted previous convictions and were sentenced to a fine of £5 or three months' hard labour. The remainder were first offenders and were fined £3 or thirty days' hard labour. The passive resisters elected to go to prison.

On 8 December 1946 the UNO accepted a Franco-Mexican proposal asking the Governments of India and the Union to report at the next session of the Assembly on the measures adopted to settle their disputes about the treatment of Indians in South Africa.⁷¹ The N.I.C. convened a mass meeting the following day. Dr Naicker declared: 'You have heard the joyful news from U.N.O. This does not mean we must relax, we are going to continue our Passive Resistance struggle.'⁷² But by now the support

68. The Natal Mercury, 24.10.1946.

69. The Natal Mercury, 25.10.1946.

70. The Natal Mercury, 24.10.1946.

71. White 'Passive Resistance', 10; see also, The Passive Resister, (6.12.1946), (1), (24), 4; Chapter Nine, 332, f/n.51.

72. A1, Vol.166, No.103 (Smuts Archives, Public Papers), Report by Captain D.A.Bester on the 'Natal Indian Congress Meeting at Nichol Square, Durban, 9.12.1946' submitted to Commissioner of Police, 10.12.1946.

of the community for the passive resistance campaign was beginning to wane. The Passive Resistance Council tried to justify this gradual decline in interest by stating that they 'never expected that the campaign could be maintained at fever pitch throughout.'⁷³ Dr Naicker added that passive resistance was to be continued in 'token form' to enable the South African Government to translate the UNO resolution into reality.⁷⁴ The N.I.C. had consequently resolved at its Conference in May-June 1947 to continue the campaign.⁷⁵

In terms of this resolution small groups of passive resisters continued to camp at the Umbilo Road - Gale Street resistance plot. One of the latter groups was led by Ashwin Choudree who had been a delegate of the Joint Council to the UNO. The police had declined to arrest the passive resisters at the camp since the 10 October 1947.⁷⁶ The Passive Resister wryly commented on this new line of action on the part of the police: '...the fact that this is done on the eve of the U.N.O. debate would indicate that the Government is reluctant to have conditions exposed.'⁷⁷ The Joint Council at an emergency conference of the N.I.C. exhorted the Indian community to give their fullest support to continue the campaign.⁷⁸

73. Report on Passive Resistance, 13.6.1946 - 13.5.1947, 13.

74. Minute and Agenda Book, N.I.C., 31.5.1947 - 1.6.1947, Presidential Address, 6.

75. I.A.P.(Minute and Agenda Book, N.I.C., Second Provincial Conference, 29-31.5.1948), Report on Passive Resistance, 14.

76. Ibid., 14.

77. The Passive Resister, (20.11.1947),(2),(46),4.

Having commenced on 13 June 1946 the campaign was 17 months old on 13 November 1947. The total number of Passive Resisters imprisoned during this period was: men 1 588; women 338.

I.A.P.,Statement issued by Joint Council Meeting held at Durban on 27th November, 1947.

78. I.A.P.,Resolutions submitted to the Emergency Conference of the N.I.C. held at the Gandhi Library on Sunday 30th November, 1947.

Delegates suggested a door-to-door appeal for funds and volunteers,⁷⁹ reorganisation of distribution of literature and encouragement of greater involvement of trade unions. These efforts failed to resuscitate interest from the community generally.⁸⁰ The Joint Council then decided to change its tactics. It resolved at its meeting on 9 January 1948 to contravene the Immigrants' Regulations Act of 1913⁸¹ as Gandhi had done some thirty-five years previously.

This phase of the struggle commenced on 24 January 1948.⁸² R.A. Pillay and R. Mahabeer led the first batch of twenty-five resisters across the Natal/Transvaal border. They were only arrested on 10 February 1948. R.A. Pillay explains that the Government hesitated to arrest the passive resisters immediately. He had addressed numerous meetings in the Transvaal and when no arrests were made he declared at a public meeting that the passive resisters would move into the Orange Free State. The following day they were arrested.⁸³ They were sentenced at the Johannesburg Magistrate's Court to one month's imprisonment, suspended,

79. Interview with R.G. Pillay, Durban, 13.9.1983.

80. Johnson, 'Indians and Apartheid in South Africa', 79-80.

81. Minute and Agenda Book, N.I.C., 29-31.5.1948, Secretarial Report for the Year Ending 30th May, 1948, 16; see also, The Natal Mercury, 12.1.1948; I.A.P., Report on Passive Resistance Campaign submitted to the S.A.I.C. Conference 17-19.9.1948; Palmer, The History of the Indians in Natal, 139; Calpin, Indians in South Africa, 260. For the implications of the Act and the penalties imposed for contravening the Act see, Minute and Agenda Book, N.I.C., 29-31.5.1948, Secretarial Report, Annexure 3, 1; White, 'Passive Resistance', 22, f/n.141.

82. Minute and Agenda Book, N.I.C., 29-31.5.1948, Secretarial Report, 17; see also, The Natal Daily News, 23.1.1948. White gives the date as 15 January 1948. This is an error.

83. Interview with Rungasamy Aranjalam Pillay, Durban, 8.9.1983. He is an accountant and he played an active role in the N.I.C. He served numerous terms of imprisonment with Drs Naicker and Dadoo; see also, White, 'Passive Resistance', 22-23, for the Government's reason for the delay in arresting these passive resisters; see also, The Natal Mercury, 10.2.1948; The Leader, 14.2.1948, 1.

provided the offence was not repeated. They were then sent back to Newcastle across the border. On 12 February 1948, 15 of the 25 resisters once again contravened the Act by crossing the border. This time they were sentenced on 18 February to three month's hard labour (plus one months' suspended sentence). On 10 February Drs Naicker and Dadoo were charged in the Durban Magistrate's Court with aiding and abetting the resisters. In terms of the penalty under the Immigrants' Regulations Act they were each sentenced to six months' imprisonment.⁸⁴

A small coterie of dedicated passive resisters continued the campaign. But the campaign had spent its force. It no longer attracted any significant measure of participation or interest from the general Indian population. When the Nationalists came to power in 1948 under Dr D.F.Malan the Joint Council decided to suspend the passive resistance campaign in June 1948.⁸⁵ They wanted to obtain an 'unequivocal statement from the Government before declaring to the people its line of action.'⁸⁶ The Nationalist Government refused to recognise the N.I.C. and the passive resistance movement was not resumed.

84. Minute and Agenda Book, N.I.C., 29-31.5.1948, Secretarial Report, 17-18; see also, The Natal Mercury, 27.2.1948.

85. I.A.P., (Minute and Agenda Book, N.I.C., Third Annual Provincial Conference, 24-26 June, 1949), General Secretary's Report, Period: June 1948 - June 1949, 55; see also, Johnson, 'Indians and Apartheid in South Africa', 80; H.K.Junckerstorff, Reconciliation in South Africa and the Status of the Indians in International Law, 17.

86. The Passive Resister, (16.7.1948), (3), (18), 1 and 2.

By the time the Asiatic Land Tenure and Indian Representation Act of 1946 had been passed the whole complexion of the Indian political movement had changed drastically. The radical element had consolidated its leadership in the Indian community. They were 'bolder and more imaginative' than the moderates and were attuned to the 'mood and aspirations' of the majority of Indians.⁸⁷ It is hardly surprising therefore that when the Joint Passive Resistance Council made a plea 'for the creation of a broader South African Society in which race, colour, and creed were to be no bar to the individual's right to equality before the law, justice, and fair-play',⁸⁸ through the passive resistance movement on 13 June 1946 they received overwhelming support not only in South Africa but also from abroad. Gandhi himself advised: 'It is my firm conviction that Indians in South Africa must not submit to the latest racial legislation of the Union of South Africa...they have at their disposal the matchless weapon of Satyagraha...'⁸⁹ The campaign in South Africa was essentially non-violent and demanded from the volunteers⁹⁰ a high degree of courage and self-discipline, suffering and sacrifice. The Passive Resistance Council wanted to embarrass the Government by deliberately violating the 'Ghetto Act'. It was hoped that the Government would then abrogate the obnoxious legislation. For this reason the Umbilo Road - Gale Street plot had been occupied as a symbolic gesture.⁹¹

87. Pahad, 'The Development of Indian Political Movements', 233.

88. S.Bhana and U.Dhupelia, 'Passive Resistance Among South Africans' (University of Durban-Westville, Eighth Biennial Conference of the S.A. Historical Society, Paper, 1981), 1.

89. Rustomjee, Messages to the South African Indian Community from the Leaders of India, 2; see also, UNISA, Microfilm Reel 13A, No.2: XN1:84(Carter-Karis Collection), G.M.Naicker, What I owe to Mahatma Gandhi, 84.

90. I.A.P., 'We Shall Resist!' (Durban, The Passive Resistance Council of the N.I.C., Leaflet, 1946).

91. A.Choudree, 'South Africa turns against its Indians', Asia and the Americas, (Sept.1946), 394.

Although the campaign had been conducted for almost two years it 'never reached serious dimensions, but it attracted a great deal of publicity.'⁹² It enjoyed international recognition as part of the world-wide struggle to implement the war aims and the United Nations Charter. In this context the South African population saw the United Nations resolution of 8 December 1946 as a vote of censure against South Africa's treatment of its non-White peoples. The delegates of the Joint Passive Resistance Council had succeeded in focussing attention through numerous publications on the disabilities of non-Whites in South Africa at the United Nations.⁹³

Amongst these was the treatment of passive resisters in prison which was described as 'brutal and savage'.⁹⁴ In a detailed memorandum⁹⁵ the N.I.C. outlined the treatment meted out to passive resisters: passive resisters were treated as criminal and not as political prisoners; abusive language was used by officials; basic amenities and facilities were lacking; resisters had to wait naked for periods in excess of half an hour before medical examinations were conducted; they were subjected to humiliating body searches; unhygienic conditions generally prevailed; the diet in comparison to that of White prisoners was poor. The memorandum concluded that the prisons of South Africa were a 'reproach' to Christian conscience and a 'scathing indictment' on civilisation.

92. L.Marquard, The Peoples and Policies of South Africa(Cape Town, Oxford University Press, Second Edition, 1960), 75; see also, S.L.Singh, 'The Ghetto Act of South Africa', The Pravasi, (Vijyadashmi 2004),(1),(1), 9.

93. Minute and Agenda Book, N.I.C., 29-31.5.1948, Secretarial Report, 9 and Annexure 2, 1-3.

94. Indian Views, 13.11.1946, 5.

95. I.A.P.,Memorandum submitted to the Penal and Prison Reform Commission by Natal Indian Congress on Friday, 16th. August, 1946 at Durban. For further copies of the memorandum see, Minute and Agenda Book, N.I.C., 31.5.1947-1.6.1947, Secretarial Report, Annexure 'X'; UNISA,Accession 105, 7.3.18.

Billy Peters describes his treatment in prison as 'harsh'. R.A. Pillay maintains that he was treated as a convict. He was subjected to every conceivable hard labour that could be imposed by the prison authorities: working in the quarries; on the roads; carrying wood; and felling trees for farmers. J.N.Singh refers to his experience in prison as 'shocking'. His hard labour comprised, inter alia, shovelling coal at the Durban Bay and sewing bags for the post-office. The food was most unappetising, to say the very least. R.G.Pillay complains of an unpleasant prison experience.⁹⁶ Against this Mrs H.Khan, a passive resister from Johannesburg, stated, that she was not harshly treated in the Durban Central Prison. She had clean cells and commented: 'It was not like jail at all.'⁹⁷

An important outcome of the Indian passive resistance campaign in South Africa was the closer political co-operation with the Blacks and other people of colour.⁹⁸ As early as 1943 the S.A.I.C. had resolved to co-operate with other non-White organisations.⁹⁹ When the passive resistance campaign started in 1946 The African People's Organisation representing the Coloured community of Natal identified with the Indian struggle.¹⁰⁰ The Non-European Unity Movement saw the 'Ghetto Act' as 'a blow directed against the entire Non-European population.'¹⁰¹ It

96. Interviews in Durban with Billy Peters, 8.9.1983; R.A.Pillay, 8.9.1983; J.N.Singh, 8.9.1983; R.G.Pillay, 13.9.1983.

97. The Natal Daily News, 23.8.1946; see also, The Indian in South Africa, Pamphlet No.4a, The So-Called Passive Resistance Movement (Durban, Durban City Council and Durban Joint Wards Committee, n.d.); S.Rustomjee et al., South Africa defies United Nations. What Next? (New York, South African Passive Resistance Council, October 1947), 22-23.

98. R.de Villiers, 'South African Politics: The Rising Tide of Colour', in E.Hellman and H.Lever(Eds.), Conflict and Progress: Fifty Years of Race Relations in South Africa (Johannesburg, Macmillan (South Africa), 1979), 47.

99. See above, Chapter Five, 188, f/n.124.

100. Minute and Agenda Book, N.I.C., 29-31.5.1948, Secretarial Report, 10; see also, Minute and Agenda Book, N.I.C., 31.5.1947 - 1.6.1947, Secretarial Report, 13.

101. W.C.L., ABX 460411a (Dr A.B.Xuma Papers), Non-European Unity Movement and the Indian People of South Africa: Joint Secretaries- To All Non-Europeans, 11.4.1946.

advised that the only bulwark against the aim of the Government was the unity of the non-European people.

Similarly the A.N.C.(Cape) at its Conference in Cape Town on 29 June 1946 desired to assure the Indian passive resisters that it also condemned the Union policy of colour discrimination of which the Indians were the most recent victims.¹⁰² The National Anti-pass Conference held on 23 June 1946 in Johannesburg declared its support for the passive resistance campaign.¹⁰³ In addition closer co-operation between the A.N.C. and the Transvaal Indian Congress and N.I.C. was achieved when Drs Dadoo, Naicker and Xuma signed the 'Doctors' Pact'.¹⁰⁴

The passive resistance campaign had a profound effect on the Africans. The Indian community who were numerically small was engaged in a 'fierce struggle' and was 'succeeding in embarrassing the authorities.'¹⁰⁵ Indian political consciousness came to be linked with that of general Black consciousness. The leaders began to demand 'absolute equality in relatively aggressive tones'¹⁰⁶ for all non-White people as a whole. At first the consolidation of Indo-African joint

102. ABX 460629(Dr A.B.Xuma Papers), African National Congress (Cape) Resolutions of Conference held at Cape Town, June 29,1946.

103. I.A.P.,Report of Natal Indian Congress Passive Resistance Campaign in Natal submitted to S.A.I.C., 21.7.1946, 4.

104. A410/B.2.7 (File 2) (Ballinger Papers), Joint Committee of the African National Congress, the Transvaal Indian Congress and the Natal Indian Congress, 9.3.1947. For further details of this pact see, T. Karis and G.M.Carter(Eds.), From Protest to Challenge, Vol.2, 92 and 272; Johnson, 'Indians and Apartheid in South Africa', 81; Minute and Agenda Book, N.I.C.,31.5.1947 - 1.6.1947, Secretarial Report, Annexure V; L.Kuper, 'African Nationalism in South Africa, 1910-1964', in M.Wilson and L.Thompson(Eds.) The Oxford History of South Africa, 1870-1966 (Oxford, Clarendon Press, Vol.II, 1975), 458; N.T.Naicker, 'The Indians in South Africa', Journal of Human Relations,(1960),(8), 483; M.Benson, The African Patriots:The Story of the African National Congress (London, Faber and Faber Limited, 1963), 140; White 'Passive Resistance', 8-9; UNISA, Accession 105, 18.6.

105. H.I.E.Dhlomo,'Inner Significance of Indian Passive Resistance Campaign',The Forum, (6.7.1946),(9),(14),33; see also, Indian Opinion, 12.7.1946, 220; Benson, The African Patriots, 140.

106. Meer, 'An Indian's Views on Apartheid', 447.

resistance was a slow process. After the 1949 riots between Africans and Indians in Durban ¹⁰⁷ the closer co-operation between the A.N.C. and N.I.C. gained momentum. In 1952 Indians supported the Africans in the Defiance Campaign. ¹⁰⁸ In the 1960s when the Government clamped down on the N.I.C. and the A.N.C their leaders were banned and imprisoned and they were compelled to move apart once more.

Despite Gandhi's noble philosophy, passive resistance or even Satyagraha is in the ultimate analysis 'a persistent moral blackmail; it can only work to the extent that your antagonist shares your values and concedes your moral superiority at the outset.' ¹⁰⁹ In other words for the movement to be successful there must exist a predominant, functional public opinion the impact of which cannot be ignored or disregarded by the ruling power. Gandhi's success with the technique of Satyagraha in India generally was due to the existence of such opinion as well as to other factors: the principle of self-rule had long been conceded; British administration was dependent on local co-operation; Europeans were in a tiny minority; the population was generally homogeneous despite religious and language differences. In South Africa his success can be attributed largely to his personality, and the intervention of the British and Indian Governments in South Africa's internal affairs under the demands of Imperial responsibility. ¹¹⁰

107. For details see, Union of South Africa, Report of the Commission of Enquiry into Riots in Durban (UG 36/1949, 7.4.49); M. Webb and K. Kirkwood, The Durban Riots and After (Johannesburg, SAIRR, n.d.); S.L. Kirk, 'The 1949 Durban Riots: a Community in Conflict' (University of Natal, Durban, Unpublished M.A. thesis, 1983); Calpin, Indians in South Africa, 286-304; Palmer, The History of the Indians in Natal, 156-163. The author also has in his possession statements, reports, evidence, statistics submitted to the Judicial Commission of Enquiry, Durban Riots, January 1949 by Indo-European Council (Durban and Coast District), 7.3.1949; N.I.C., n.d.; Natal Indian Organisation (N.I.O.), 3.2.1949; 11.3.1949; 21.3.1949; S.R. Naidoo, President of N.I.O., Pietermaritzburg Branch, 18.3.1949.

108. Interview with J.N. Singh, Durban, 8.9.1983.

109. P.L. van den Berghe (Ed.), The Liberal Dilemma in South Africa (London, Croom Helm, 1979), 12; see also, H. Adams, Modernizing Racial Domination, 111.

By the 1940s passive resistance as a weapon for change in Government policy towards the Indians in South Africa had little chance of success. The White oligarchy 'were not only stronger in numbers but also remained unimpressed by the moral principles implicit in passive resistance.' ¹¹¹ White opinion remained obdurate in regard to its monopoly of power and was not prepared to grant any concessions which challenged that supremacy.

The N.I.C. had hoped that the sacrifice, courage, discipline and moral stature of the leaders and volunteers in the passive resistance campaign would result in international intervention on behalf of the Indian community in South Africa. But Imperial intervention was no longer feasible. The Indian community turned to the UNO. The campaign had reached its peak when the General Assembly met. The United Nations resolution, though hailed as a victory by Indians, made no difference to the status quo in South Africa. In short, the UNO proved powerless as an international pressure group to effect the repeal of discriminatory legislation in South Africa. The resistance campaign foundered. Johnson declares: 'This, more than any direct action by the South African government against the NIC, was responsible for the collapse of the 1946 resistance.' ¹¹²

111. Adams, Modernizing Racial Domination, 111; see also, E.H. Brookes, 'A New Life of Mahatma Gandhi', Indian Opinion, 19.8.1949, 241; Palmer, The History of the Indians in Natal, 139, f/n.2, where she discusses the success of the suffragette agitation conducted along the lines of passive resistance because of the interest and sympathy the population at large showed in their campaign.

112. Johnson, 'Indians and Apartheid in South Africa', 148.

The radical element had come to power in the N.I.C. because of their militancy as opposed to the moderate policy of their predecessors. Political awareness of opposition to the authorities was manifested through mass meetings, rallies, and small discussion groups.¹¹³ The tremendous response to the campaign in June 1946 was fundamentally a reaction to the proposed militant action against oppression. But the N.I.C. leadership, other considerations apart, had failed 'to demonstrate that confrontation was a viable policy.'¹¹⁴ Consequently they were never able to rally the support of the community as they had done in the first six to nine months of the campaign. The disillusionment of the Indian community with the radical group was made patently clear during the Royal Visit of King George VI and his family to South Africa in 1947. The Indian community ignored the appeals of the N.I.C. to boycott the tour.¹¹⁵

The rationale of the passive resistance campaign was to focus international attention on the disabilities of the Indians in South Africa by courting arrest in violation of the 'Ghetto Act'. However, the authorities arrested the passive resisters for trespassing and for contravening the Riotous Assemblies Act.¹¹⁶ This was a blow to the

113. Pahad, 'The Development of Indian Political Movements', 253.

114. Johnson, 'Indians and Apartheid in South Africa', 147-148.

115. Interview with Jumna Parsad Gokool, Durban, 8.9.1983. He is a businessman who was associated with the N.I.C. during Kajee's time; see also, White, 'Passive Resistance', 14-16.

116. Indian Views, 17.7.1946, 2.

In this connection Kajee commented that they could have refused to fill in the forms required of Indian property owners in terms of the Act instead of courting arrest as trespassers.

I.A.P., Text of Talk to Maritzburg Rotary on 17th April, 1947 by A.I. Kajee, para. 18, 5. For a further copy of this talk see, I.A.P., (Minute and Agenda Book, South African Indian Conference, 13-14.3.1948).

N.I.C. leadership. In spite of their poignant statements in court to justify their action as a political agitation the passive resisters were treated as criminal offenders and sentenced accordingly. The publicity anticipated against the Asiatic Act was therefore less dramatic and this contributed to the gradual demise of the movement. Other reasons for the wane of interest in the passive resistance campaign were: lack of funds to subsidise the families of passive resisters;¹¹⁷ disenchantment of members with the tenor of speeches by the leaders;¹¹⁸ the formation of the Natal Indian Organisation by the Kajee-Pather Group;¹¹⁹ failure to recruit dedicated passive resisters.¹²⁰

It is interesting to note that among the people interviewed by the author, those who belonged to the Kajee-Pather Group, like J.P.Gokool, unhesitatingly express the opinion that the campaign simply 'fizzled out' because its purpose had not been achieved.¹²¹ On the other hand, those who had participated in the campaign assert that it was a success notwithstanding that the 'Ghetto Act' was not repealed. They argue that the campaign must be evaluated in regard to the long term results instead of any short term gains. J.N.Singh, for instance, maintains that the campaign was successful because it enhanced the self-respect of the Indian people; it made the Indian more politically conscious as compared to the previous decades; and it was an eye-opener to other communities such as the Blacks and Coloureds.¹²²

George Singh, Dhanpal Naidoo,

117. White, 'Passive Resistance', 15.

118. The Natal Daily News, 3.10.1947.

119. Calpin, A.I.Kajee, 155; see also, White, 'Passive Resistance', 18.

120. The Natal Daily News, 3.10.1947.

121. Interview with J.P.Gokool, Durban, 8.9.1983.

122. Interview with J.N.Singh, Durban, 8.9.1983.

Ragavadu Pakiry Naidoo¹²³ and other resisters interviewed aver that the campaign focussed the attention of the world on the disabilities of the non-Europeans generally and the build-up of world opinion against apartheid today is the result of the passive resistance campaign of 1946. This fact more than anything else leads them to conclude that the campaign was a success.

The passive resistance campaign of 1946 conducted with earnestness and resolve was certainly an appeal 'to the civilised conscience of the Europeans in South Africa.'¹²⁴ At the same time the mobilisation of international opinion was an essential ingredient for the repeal of discriminatory legislation. Drs Dadoo and Naicker, the radical leaders, had launched a militant and coercive struggle in keeping with their declared policy of rejecting the negotiation politics of representations and supplications characteristic of the accommodationists. In spite of arguments propounded about the long term influence of the campaign the fact remains that after two years of concerted effort the Joint Passive Resistance Council failed to persuade the Government to abrogate the obnoxious 'Ghetto Act' and other discriminatory legislation. The Government was unmoved by the sacrifices of hundreds of passive resisters and the condemnation of the international community. But to the credit of the Joint Council the campaign brought the non-White peoples closer politically and was symbolic of the courage of all those who participated as passive resisters.

123. Interview with George Singh, Durban, 8.9.1983; Dhanpal Naidoo, Durban, 6.9.1983; Ragavadu Pakiry Naidoo, Durban, 11.9.1983.

124. G.M.Naicker, Let Me Live: Letter to a European, (Durban, Passive Resistance Council, June 1946).

As for Smuts, his prestige had reached its nadir. He was no longer considered the illustrious, international leader. At the United Nations everyone knew that courageous Indian men and women were going to jail under his law. Smuts's policy was seen as the erosion of civil rights and liberties in South Africa and it earned for him the opprobrium of the upholders of democratic values. He was reduced to the level of just a leader of a small White aristocracy. Smuts failed miserably to muster support for himself at the Bar of the World, when the Indian question came up for discussion.

CHAPTER NINE

A VAIN APPEAL TO THE UNITED NATIONS ORGANISATION

The UNO represented the symbol of hope for all communities who felt themselves oppressed. The idealistic declarations of policy such as the Atlantic Charter, the Dumbarton Oaks Plan, Roosevelt's 'Four Freedoms', the San Francisco Conference and the Charter of the United Nations constituted the promise of a better world.¹ The Indian community of Natal was optimistic that the Charter of the UNO which purported to guarantee the pristine democratic values and fundamental human rights was the key to the amelioration of their status and condition. In this they were naive. They took the declarations of the lofty ideals too much at face value. They believed that the idealism could be immediately translated into realism when the request was made. They failed to realise that in the complex patterns of international politics the power of the United Nations to enforce any decision on controversial issues was seriously circumscribed, 'even though the procedure laid down on paper appeared to be otherwise.'² They laboured under the grave misconception that discriminatory legislation in South Africa would be repealed as soon as they 'exposed the domestic life of South Africa to foreign diplomatic and economic pressure.'³

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1. S.Fielding, 'South Africa and World Opinion', Race Relations, (1948),(XV),(4), 109; see also, Palmer, The History of the Indians in Natal, 146-147.
 2. Ibid., 147.
 3. C.W.de Kiewiet, The Anatomy of South African Misery (London, Oxford University Press, 1956), 64.

The almost paranoid obsession of the European community in Durban in regard to 'Indian penetration' had culminated in the 'Ghetto Act'. This legislation caused a purely local matter to be blown out of all proportions, leading Pandit Jawaharlal Nehru, the first Prime Minister of India, to state: 'The issue of Indians in South Africa has become a world issue.'⁴ The Indian question in South Africa was also destined to become one of the Sisyphean tasks of the UNO. But all the effort and time spent to change anti-Indian legislation were apparently in vain. The South African Government remained obdurate and the Indian position became worse if anything at all.

The international aspects of the Indian question have been adequately evaluated by Pachai.⁵ The debates and related issues have also been satisfactorily dealt with by other commentators.⁶ We shall therefore briefly analyse the principal arguments at the UNO relevant to the 'Indian penetration' issue and examine their impact on the local Indian political activities and general reaction.

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4. Rustomjee, Messages to the South African Indian Community from the Leaders of India, 3.
 5. Pachai, The South African Indian Question, Chapters Seven - Ten, 197-283.
 6. Joshi, The Struggle for Equality, 144-200; Calpin, Indians in South Africa, 244-260; Palmer, The History of the Indians in Natal, 146-154; Kondapi, Indians Overseas, 1838-1949, 275-279; M.S.Rajan, United Nations and Domestic Jurisdiction (London, Asia Publishing House, Second Edition, 1961), 222 et seq; Coger, 'The International Politics of Apartheid'; Junckerstorff, Reconciliation in South Africa and the Status of the Indians in International Law; UNISA, Microfilm Reel 7, No.1:AA1:84/1 (Carter-Karis Collection), Principal Documents Relating to Consideration by the United Nations General Assembly of the Representations by the Government of India on the Treatment of Indians in the Union of South Africa (Cape Town, Cape Times Ltd., 1946), 1-111.

When the S.A.I.C. deputation to Smuts in February 1946 had failed to persuade him to convene a round table conference between the Governments of India and the Union the resolution to bring the whole issue before the UNO was implemented.⁷ This was effected through the Government of India. Sir A. Ramaswami Mudaliar, Leader of the Indian Delegation to the United Nations, requested the United Nations Secretary-General to include the question of the treatment of Indians in the Union of South Africa in the provisional agenda for the second part of the first session of the General Assembly.⁸ Sir Ramaswami Mudaliar adumbrated the basis of the Indian case: deprivation of the elementary rights of franchise; restrictions on acquisition and occupation of property, trading, employment in public services, travel; lack of educational facilities; discrimination against and segregation of the Indian community by the promulgation of the Asiatic Land Tenure and Indian Representation Act which was tantamount to the unilateral repudiation of the Cape Town Agreement and the joint statement of the Union and Indian Governments to continue the Cape Town Agreement and co-operation between the two countries; consequential termination of the trade agreement between South Africa and India and the recall of the High Commissioner for consultation. Sir Ramaswami concluded: 'A situation has thus arisen which is likely to impair friendly relations between India and South Africa and, under Articles 10 and 14 of the Charter, is submitted for consideration of General Assembly.'⁹

7. See above, Chapter Seven, 266, f/n.93; see also, M.D.Naidoo, Round Table Conference. Our Views(Durban, Passive Resistance Council, Pamphlet, n.d.),4.
8. I.A.P.,Unrestricted A/149 (United Nations, General Assembly), Treatment of Indians in the Union of South Africa (Item 31 of the Provisional Agenda for the Second Part of the First Session), A.Ramaswami Mudaliar, Leader of the Indian Delegation to the General Assembly, and Member, Government of India - Mr Trygve-Lie, Secretary-General, United Nations, 22.6.1946; see also, Principal Documents on the Treatment of Indians, 1946,1; The Rand Daily Mail, 24.6.1946; The Star, 24.6.1946.
9. Principal Documents on the Treatment of Indians, 1946, 1; see also, Pachai, The South African Indian Question, 198.

The Union Government informed Mr Trygve-Lie, the Secretary-General, that in the second part of the first session of the General Assembly it would object to the jurisdiction of the General Assembly over the issue in terms of Article 2(7).¹⁰ South Africa asserted that the question was a purely domestic one. As such the Union Government felt that the matter need not be submitted to the UNO for settlement under the Charter.

In the meanwhile the passive resistance campaign had started in Durban. Ashwin Choudree as a delegate of the Passive Resistance Council left on 10 July 1946 for the United States of America.¹¹ He held numerous press conferences in order to acquaint the American people of the 'great human tragedy' in South Africa and appealed for 'moral support and sympathy.' He expressed the hope that when India's appeal came before the General Assembly 'sanctions of decency and democracy will be on her side.'¹² The statements helped to keep the delegates

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10. This article reads: 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.'
Ibid., 198; see also, Palmer, The History of the Indians in Natal, 148.
 11. The S.A.I.C. had deprecated this action. The N.I.C. declared that the S.A.I.C. could send its own delegates.
Indian Views, 10.7.1946, 1 and 31.7.1946, 1; see also, Report on Passive Resistance, 13.6.1946 - 13.5.1947; 15; I.A.P., S.A.I.C., Resolutions passed at Executive Meeting held at Cape Town on 21st and 22nd July, 1946, Resolution No.3, 2-3, where A.I.Kajee, Adv.A. Christopher, Messrs P.R.Pather, S.R.Naidoo, A.M.Moolla, H.A. Naidoo, C.Palsania, Adv.Minty together with one or two to be nominated by the Transvaal Indian Congress were appointed as delegates to the United States to prepare and submit the case of Indians in South Africa to UNO, assist the Government of India Delegation and educate American public opinion on the discriminatory and racial legislation in South Africa.
 12. AD 843/B.77.4.9(S.A.I.R.R. Papers), Statement to Press Conference held at Hotel Waldorf-Astoria on Monday July 29, 1946; see also, Indian Views, 11.9.1946, 5.

of other countries to UNO fully informed of the Indian situation in Durban. The S.A.I.C. decided to send delegates separately from the N.I.C. But by the time the General Assembly met no unanimity was reached over the S.A.I.C. delegates. Only four S.A.I.C. nominees were prepared to go: A.I.Kajee, A.J.Christopher, P.R.Pather and H.A.Naidoo.¹³ Later H.A.Naidoo resigned from the S.A.I.C. as did Sorabjee Rustomjee. They went to the UNO as representatives of the Passive Resistance Council,¹⁴ leaving Kajee, Christopher and Pather as representatives of the S.A.I.C. These separate delegations with a single purpose reduced the gravity of the Indian issue to a tragi-comic situation. More importantly it tended to weaken the case of India at UNO.¹⁵

While preparations were being made to consider the Indian question at the UNO the S.A.I.C. placed the delegation of India in an invidious position by negotiating secretly for a round table conference between the Government of India and the Union.¹⁶ In a confidential discussion Kajee informed Hofmeyr as the Acting Prime Minister that 'if the Union

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13. Indian Views, 28.8.1946, 1; see also, I.A.P., (A.I.Kajee Correspondence, 4(d)), Resolutions passed by the Executive of the S.A.I.C. at its Meeting held at 1 Tyne Street, Cape Town, on the 22nd and 23rd September, 1946, Resolution No.1, 1.
 14. Indian Views, 16.10.1946, 3; see also, The Leader, 19.10.1946, 1.
 15. Pachai, The South African Indian Question, 200; see also, The Leader, 26.10.1946, 1.
 16. Resolutions passed by the Executive of the S.A.I.C., 22-23.9.1946, Resolution 2, 2-3; see also, I.A.P., (A.I.Kajee Correspondence, 4(d)), Statement by Councillor Ahmed Ismail, President, South African Indian Congress, 28.9.1946; I.A.P., (A.I.Kajee Correspondence, 4(d)), P.R.Pather - The Hon.Secretary, Passive Resistance Council, 3.10.1946; Indian Views, 16.10.1946, 5.
It is important to note that this was not a unanimous decision. J.N.Singh and four others representing the N.I.C. by proxy moved an amendment to delay the decision until a special conference of the S.A.I.C. or its Executive was held. When the amendment was lost by 12 votes to 5, they walked out of the meeting.
I.A.P. (A.I.Kajee Correspondence, 3(e)), S.A.I.C. - J.W.Meldrum, Secretary for the High Commissioner for India in the Union, 23.9.1946. J.N.Singh explained during his interview with the author, Durban, 8.9.1983, that he saw no useful purpose in holding such a round table conference as he felt that the Government would not have changed its policy.

Government were to extend an invitation to the Indian Government for the holding of a Round Table Conference, with a definite agenda, and made a gesture of not operating the Asiatic Land Tenure and Franchise Act, the Government of India would come to such a conference and on its part will postpone the application of economic sanctions and ask for the postponement of the hearing of its complaint at UNO.' ¹⁷ Hofmeyr replied that if the request for such a conference came from the Indian Government and provided that the Agenda was mutually arranged the Union Government would accede to such a request.

Hofmeyr conveyed the gist of this discussion to Smuts. ¹⁸ J.W.Meldrum, the Secretary to the High Commissioner for India, intimated that the discussion with his Government would involve the Asiatic Act and specific programmes for housing, social welfare and other amenities as mentioned in Smuts's speech during the debate on the Second Reading of the Asiatic Bill. In his reply Smuts indicated that he was not averse to Kajee's suggestion. But he cautioned that it must be emphasised that the initiative was to be an Indian one and not that of the South African Government. Further that the action taken to bring the matter before the UNO and economic sanctions imposed against South Africa by the Indian Government were to be suspended. ¹⁹

17. I.A.P.(A.I.Kajee Correspondence, 3(b)), Notes of Conversation with Mr J.H.Hofmeyr, Deputy Prime Minister in Pretoria 5th October, 1946, 1; see also, J.van der Poel(Ed.)., Selections from the Smuts Papers, Vol.VII, 94-95.

18. A1, Vol.165, No.100 (Smuts Archives, Public Papers) Cablegram: Hofmeyr - Prime Minister, 2.9.1946.

19. A1, Vol.165, No.103 (Smuts Archives, Public Papers), Telegram: Prime Minister - Hofmeyr, 4.9.1946.

When these overtures by the S.A.I.C. were revealed to the public,²⁰ the officials of the S.A.I.C. were severely criticised for their clandestine role by the Passive Resistance Council. They passed a vote of no confidence in the delegates of the S.A.I.C. going to the UNO as representatives of the Indians in South Africa.²¹ The suggestion made by Kajee was denigrated as mere 'kite flying' and 'probably Government inspired.'²² Eventually Nehru intervened in this controversy raging between the S.A.I.C. on the one hand and the Transvaal Indian Congress, N.I.C. and Passive Resistance Council on the other. He stated that he would accept the S.A.I.C. decision for a round table conference if it was endorsed by the Transvaal Indian Congress and the N.I.C.²³ Dadoo and others informed Nehru that the S.A.I.C. had arrived at a unilateral decision. It had no mandate from the 'people directly responsible for the struggle against the 'Ghetto Act'.²⁴

Hindsight would suggest that had the recommendations of the S.A.I.C. at this time been implemented the whole course of 'Indian history' in South Africa presumably may have changed. Smuts was aware that at the UNO he would 'not receive much sympathy in connection with Indian troubles....'²⁵ and that there was 'a growing widespread opinion adverse

20. See, I.A.P.(A.I.Kajee Correspondence,4(d)), Kajee-Meldrum, 28.9.1946; see also, White, 'The Evolution of Policy, 1943-1948', 106.

21. The Leader, 12.10.1946, 5.

22. Ibid., Editorial, 4.

Kajee explained his views in regard to the round table conference and his attitude to passive resistance in a lengthy letter to the Natal Passive Resistance Council. It must be pointed out to Kajee's credit that he realistically appraised the limitations of the UNO in resolving the dispute between the Union and India. He also assessed the situation correctly that South Africa would have the final responsibility of defiance or agreement in the UNO resolutions. See, I.A.P. (A.I.Kajee Correspondence,4(d)),A.I. Kajee - The Hon. Secretary, Passive Resistance Council, 4.10.1946; see also, Indian Views, 16.10.1946, 1.

23. The Leader, 19.10.1946, 1.

24. Ibid., 1; see also, Indian Views, 2.10.1946, 1.

25. J. van der Poel(Ed.), Selections from the Smuts Papers, Vol.VII, 63.

to [South Africa].²⁶ In the light of these developments Indians may have been granted some concessions and rapprochement with India would have been established. As it was they gained little except the sympathy of some countries. R.D.Naidu rejected this argument maintaining that by the time the matter was raised at the UNO the problem was no longer only an Indian question. World attention had to be focussed on the general disabilities of all non-Whites in South Africa and with J.N.Singh concluded that a round table conference would have achieved nothing.²⁷

Smuts was the leader of the South African delegation to the UNO. He was assisted by: D.G.Shepstone, in whom the Indians expressed disappointment because they regarded him as their friend and had expected him to decline the invitation to accompany Smuts to the UNO; A.L.Barns, Durban's Deputy-Mayor, and as such, partisan to the interests of Europeans; G.Heaton-Nicholls, who, as an unrepentant protagonist for the repatriation of Indians, exhibited an insatiable mania for segregation;²⁸ and, Dr L.C.Steyn, the Government's Chief Law Adviser who had drafted the Asiatic Land Tenure Act. There was also a formidable array of officials. Insofar as A.L.Barns was concerned the N.M.A. had nominated him to accompany the South African delegation but the D.C.C. had voted £500 towards his expenses. The N.I.C. protested against the vote on the grounds that Indian ratepayers should not be required to pay for propaganda against themselves.²⁹ Further the D.C.C. had in

26. Ibid., 88.

27. Interview with Ramsamy Duraisamy Naidu, Durban, 16.9.1983. He was mainly involved in the Trade Union Movement and took an active part in the N.I.C.

28. The Leader, Editorial, 17.8.1946, 4; see also, The Natal Witness, 23.8.1946, where the full list of officials assisting Smuts is given.

29. Indian Opinion, Editorial, 30.8.1946.

conjunction with the Durban Joint Wards Committee published for distribution abroad tendentious pamphlets and a booklet presenting the White viewpoint in Durban.³⁰

The leader of the Indian delegation was Mrs Vijayalakshmi Pandit, sister of Nehru. She had a charming personality and was a captivating speaker. Her delegation comprised, amongst others, Sir Maharaj Singh, a former Agent-General to South Africa; Mr Justice M.C.Chagla, an international jurist and Mr V.K.Menon, President of the India League, London.³¹

The historic session of the United Nations General Assembly began on 23 October 1946 at Lake Success.³² The Government of India had submitted a detailed memorandum on the position of Indians in South Africa:³³ reference was made to the history of Indian immigration

30. These were:

Booklet entitled: The Indian in Natal. Is he the Victim of Oppression? Eleven pamphlets on 'The Indian in South Africa' dealing with: The position in Durban, 'Ghetto Act', Health, Passive Resistance, T.B. and Nursing, Housing, Education, Libraries, Correspondence from Bombay, Social Welfare and Slaughter House services for Indians.

The Government also published for propaganda purposes a pictorial survey:

Meet the Indian in South Africa (Pretoria, State Information Office, n.d.).

The Indian publications in reply were:

The Truth about the Indian in South Africa. A Reply to "Meet the Indian in South Africa" (New York, S.A.I.C., n.d.); How We Live... (Durban, Joint Passive Resistance Council of Natal and Transvaal, n.d.).

31. See, The Leader, 26.10.1946, 1 for the other members of the Indian Delegation.

32. See, Joshi, The Struggle for Equality, 150-154 for opening speeches by the delegates of member nations.

33. I.A.P., Unrestricted A/68 (United Nations, General Assembly), Delegation of India: Memorandum on the Position of Indians in the Union of South Africa, 28.8.1946; see also, Principal Documents on the Treatment of Indians, 1946, Annexure 2.

into South Africa; the treatment of Indians and discriminatory measures against them; and the disabilities to which Indians were subject in the Union of South Africa. The South African Government in reply highlighted the shortcomings of the Indian memorandum maintaining that no recognition was given to economic, social and educational advancement enjoyed by Indians in South Africa. In a tu quoque argument the Union Government attempted to vindicate its discriminatory legislation to prevent 'Indian penetration' and residential juxtaposition of Europeans and Indians.³⁴

After the open sessions the South Africa - India case came up for discussion by the General Committee of the Assembly on 1 November 1946. One of the functions of this Committee was to allocate items on the agenda to specific committees for examination.³⁵ Smuts immediately re-

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34. I.A.P., Unrestricted A/167 (United Nations, General Assembly), Memorandum by the Government of the Union of South Africa on the Subject of Indian Legislation, 31.10.1946; see also, Principal Documents on the Treatment of Indians, 1946, Annexure 3; K.C.M.3683 (G.Heaton-Nicholls Papers). Other relevant memoranda circulated by the Governments of India and South Africa were: I.A.P., Unrestricted A/68/Add.1 (United Nations, General Assembly), Delegation of India: Addendum to the Memorandum on the Position of Indians in the Union of South Africa, 14.11.1946. This memorandum dealt with the Smuts-Gandhi Agreement and the Cape Town Agreement of 1927 and the Joint Statement of 1932. I.A.P., Unrestricted A/167/Add.1 (United Nations, General Assembly), Further Memorandum by the Government of the Union of South Africa on the Subject of Indian Legislation, 15.11.1946; see also, Principal Documents on the Treatment of Indians, 1946, Annexure 4; K.C.M.3684(a) and (b) (G. Heaton-Nicholls Papers). This memorandum dealt seriatim with the specific allegations made by the Government of India.
35. Calpin, Indians in South Africa, 244; see also, Pachai, The South African Indian Question, 201.

requested that India's complaint about the treatment of Indians in South Africa was inadmissible for discussion in the Assembly in terms of Article 2(7) because it was a domestic matter.³⁶ Legal wrangling ensued. Eventually the South African and Indian delegations agreed that the item be referred to a Joint First(Political) and Sixth(Legal) Committee which suggestion was adopted by the General Assembly.³⁷ The nature of the debates at this stage presaged that 'the South-African delegates were destined to be severely handled.'³⁸

On 20 November 1946 Chagla gave notice of a motion for discussion before the Joint Political and Legal Committees.³⁹ This resolution asked for a revision of the Union's general policy and legislative and administrative measures affecting Asiatics in South Africa to conform with the principles and purposes of the Charter. It further requested the Union Government to report on its action in this regard at the next session. The next day Mrs Pandit commenced the debate on the Indian question. She traced the early history of Indians in South Africa meticulously and logically. She declared that India was 'consistently opposed' to segregation of Indians in South Africa and that India had a moral and political obligation to Indians in South Africa.⁴⁰ She argued that India's dispute with South Africa was undoubtedly a matter for

36. Principal Documents on the Treatment of Indians, 1946, para.7, 2.

37. Ibid., para. 8, 2.

38. Calpin, Indians in South Africa, 244.

39. I.A.P., Unrestricted A/c 1/67; A/c 6/79 (United Nations, General Assembly), M.C.Chagla - The Secretary-General, United Nations, 20.11.1946.

40. I.A.P., Press Release PM/130 (United Nations, Dept. of Public Information, Press Division, Lake Success), Mrs Pandit: Address before Joint Committees 1 and 6, 3 p.m. on 21 November 1946, 2 and 6; see also, Principal Documents on Treatment of Indians, 1946, Annexure 5, 54-55; The Natal Daily News, 22.11.1946.

discussion and disposal by the Assembly because the legislation to which they objected violated the purposes of the Charter. She emphatically concluded: 'The issue, therefore, is a political(not a legal) issue; not even an issue between two countries alone but, in the possibilities of its extent, a world issue.' ⁴¹

Smuts followed Mrs Pandit. He maintained that the complaint of the Government of India raised two issues: one concerning the facts of the case and the other the legal position of the UNO and its right to ⁴² intervene in this matter. He considered the latter to be vital to the whole concept of the UNO and prospect for peace in the world. He pointed out that the statement submitted by India in support of its case concerned 'purely domestic matters of essentially internal and local concern' and discussion of such matters impinged on the total domestic administration of the Union involving the three tiers of government: central, provincial and local. ⁴³ He continued that India had no right to interfere as Indians in South Africa were not nationals of India. ⁴⁴

41. Mrs Pandit: Address before Joint Committees 1 and 6, 21.11.1946, 7; see also, Principal Documents on Treatment of Indians, 1946, Annexure 5, 55; The Leader, 30.11.1946, 3.

42. Principal Documents on Treatment of Indians, 1946, Annexure 6, para. 1, 78; see also, K.C.M.3679(G.Heaton-Nicholls Papers); The Natal Daily News, 22.11.1946; Joshi, The Struggle for Equality, 178.

43. Principal Documents on Treatment of Indians, 1946, Annexure 6, para. 3, 78.

44. Ibid., para. 4, 79.

Smuts categorically declared that the provisions of Article 2 of the Charter expressed a fundamental principle that 'every State has the right to live its own way, as long as it does not infringe the equal right of other States to do the same,...' ⁴⁵ He denied that the Union Government had violated any elementary human rights. According to Smuts the educational, social and economic development of Indians in South Africa had outstripped those of Indians in India. He claimed that the discriminatory restrictions were imposed without 'oppressive intent'. ⁴⁶

Smuts had argued the legal considerations of the South African case. Heaton-Nicholls presented the factual aspects. He asserted that the propaganda disseminated by politicians in India was the root cause of the dissension concerning Indians in South Africa and was as 'false as those who draw it.' ⁴⁷ In sketching the background to the Indian question he spoke in disparaging terms of the Blacks in South Africa and denigrated the Indians by exaggerated references to such things as 'polygamy', habits of 'purdah' and the 'harem' and 'religious festivals'. ⁴⁸ Heaton-Nicholls' contribution to the debate was nothing more than a diatribe against the Indians and India. Joshi comments: 'Mr. Heaton Nicholls of South Africa assailed India in the most indecent language heard in the forum of the world.' ⁴⁹ At the end of the debate Mrs Pandit calmly declared: 'The honourable delegate for South Africa was intolerably rude and I am surprised that anyone in this august assembly should lower the level of the debate in the manner in which he has done.' ⁵⁰

45. Ibid., para. 8, 79.

46. Ibid., para. 15, 82.

47. I.A.P., Press Release PM 143 (United Nations, Dept. of Public Information, Press Division, Lake Success), Speech by Mr G. Heaton Nicholls (Union of South Africa) before the Joint 1st and 6th Committee, 25.11.1946, 1-2.

48. Ibid., 3-7.

49. Joshi, The Struggle for Equality, 182.

50. The Passive Resister, (29.11.1946), (1), (23), 1; see also, Indian Views, 4.12.1946, 1; The Leader, 7.12.1946, 1; Principal Documents on the Treatment of Indians, 1946, Annexure 5, 66.

The Joint Committee held six meetings, with the final debate on 2 December 1946. The Indian delegation withdrew their resolution in favour of an amendment presented by the representatives of France and Mexico.⁵¹ A further amendment had been tabled jointly by the United States, the United Kingdom and Sweden seeking an advisory opinion from the International Court of Justice as to whether the issue was within the domestic jurisdiction of the Union of South Africa in terms of Article 2(7).⁵² This is what Smuts had wanted. The Franco-Mexican resolution was adopted by 25 votes to 19 with six abstentions. This made voting on the amendment to seek the opinion of the International Court unnecessary.⁵³ The Joint First and Sixth Committee therefore recommended the adoption of the Franco-Mexican resolution by the General Assembly.

51. Ibid., Annexure 7, 84. The Resolution read:

'The General Assembly having taken note of the application made by the Government of India regarding the treatment of Indians in the Union of South Africa, and having considered the matter:

- (1) States that, because of that treatment, friendly relations between the two Member States have been impaired, and unless a satisfactory settlement is reached, these relations are likely to be further impaired;
- (2) is of the opinion that the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two Governments and the relevant provisions of the Charter;
- (3) therefore requests the two Governments to report at the next session of the General Assembly the measures adopted to this effect.'

See also, 'Treatment of Indians in South Africa: Need for conformity with Charter and obligations', United Nations Weekly Bulletin, 17.12.1946, 14-19; The Natal Witness, Editorial, 2.12.1946; The Natal Daily News, Editorial, 2.12.1946; The Passive Resister, (6.12.1946), (1), (24), 4; The Leader, 7.12.1946, 1; India, Treatment of Indians in South Africa - Recent Developments, (n.d.), 1.

52. I.A.P., Unrestricted A/c 1 and 6/20 (United Nations, General Assembly), Joint First and Sixth Committee. Delegations of the United States, the United Kingdom and Sweden: Amendment to the Resolution Proposed by the Delegation of India made at the Fifth Meeting, 29.11.1946.

53. The Natal Mercury, 2.12.1946.

On 7 October 1946 Smuts briefly and dispassionately spoke to the amendment asking for the advisory opinion of the International Court of Justice insisting that South Africa's international obligations should be 'determined by the Court and not by a mere political forum.'⁵⁴ This amendment was defeated by 31 votes to 21 with two abstentions. The Franco-Mexican resolution was adopted the next day by 32 votes to 15 with seven abstentions which gave the mandatory two-thirds majority in the General Assembly.⁵⁵

The decision was hailed by Indians in South Africa as a moral victory. India emerged in her first real participation in a world assembly as the champion of the Asian and Coloured peoples of the world.⁵⁶ The UNO resolution was also seen as a 'revolt against racialism and herrenvolkism.'⁵⁷ It was considered 'an occasion for jubilation and rejoicings throughout India and the Indian community of South Africa.'⁵⁸ The Natal Daily News commented: 'Durban Indians were cock-a-hoop

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54. I.A.P., Press Release PM/228 (United Nations, Dept. of Public Information, Press Division, Flushing Meadow), Speech by Field Marshal Jan C. Smuts of Union of South Africa at Fifteenth Plenary Session, 7.11.1943, 3; see also, The Natal Daily News, 9.12.1946.
55. Principal Documents on the Treatment of Indians, 1946, Annexure 8, 105; see also, Joshi, The Struggle for Equality, 188; Pachai, The South African Indian Question, 205; Calpin, Indians in South Africa, 254; Palmer, The History of the Indians in Natal, 149; The Natal Mercury, 10.12.1946.
56. A. Choudree, 'South Africa: Its Pattern of Justice', The Pravasi, (Vijyadashmi 2004), (1), (1), 5.
57. Joshi, The Struggle for Equality, 190.
58. Calpin, Indians in South Africa, 254.

to-day over UNO's decision against the Union in her dispute with India.'⁵⁹ In contrast the bewildered European community looked upon the UNO decision with dismay. The White press condemned the joy expressed by Indians.⁶⁰ It attempted to rationalise South Africa's defeat and praised Smuts for his effort despite the set-back he suffered.⁶¹ But the faith of White opinion in his hitherto unchallenged leadership was rudely shaken.

Smuts returned home 'smoothing his ruffled plumes' to face 'white South Africans seething with indignation.'⁶² In a broadcast to the nation on 18 December 1946, he complained of 'unbelievable misunderstanding about race and colour conditions and their handling in South Africa' and a 'solid wall of prejudice against the colour policy in South Africa.'⁶³ Later, at a meeting, Smuts warned that as the majority of the representatives at the United Nations were non-White who demanded equality with the Whites South Africa would be placed in an awkward position because of its policy of White supremacy.⁶⁴ Personally

59. The Natal Daily News, 9.12.1946.

60. See, The Natal Daily News, Editorial, 10.12.1946, for example, which stated: 'Its reception and extravagant acclaim, exposes the South African Indian leadership as irritatingly stupid and maddeningly impracticable.'

61. See, Criticism of White press by 'Fairplay' - Editor, 'UN, Press and Indians', The Natal Daily News, 19.12.1946; see also, Indian Views, Editorial, 11.12.1946, 2; Joshi, The Struggle for Equality, 191; The Natal Witness, Editorial, 18.12.1946.

62. E.A.Walker, A History of Southern Africa (London, Longmans, Third Edition, 1959), 762.

63. Indian Views, 25.12.1946, 1. For a further copy of Smuts's broadcast see, K.C.M.3428(14)(G.Heaton-Nicholls Papers); The Leader, 21.12.1946, 5. Heaton-Nicholls made similar comments in his broadcast in South Africa on 4.2.1947. K.C.M.3870(d) (G. Heaton-Nicholls Papers); see also, A1/Dg(Hofmeyr Papers), for a further copy of Heaton-Nicholls' broadcast.

64. The Natal Daily News, 20.12.1946; see also, N.A., Vol.71, File 527 (22)(D.C.C., T.C.O.), N.M.A., Official Record of the Proceedings at the Special Conference of the Association held in the City Hall, Durban, on Friday the 24th January 1947 [Report of A.L.Barns], 8, where Barns makes a similar comment re equality.

Smuts 'was angry, not to say worried, at his cavalier treatment.'⁶⁵ He admitted that the UNO had given him 'a bad blow' as well as his 'first great knock' and he expressed disappointment at the manner in which it was functioning.⁶⁶ As one of the architects of the UNO it was galling to him to see the world body moving in a direction that he least expected so much so that he condemned it as 'a mere cockpit of "emotion, passion and ignorance".'⁶⁷ The experience at UNO had shocked him deeply.⁶⁸

But the victory for Indians in South Africa was a hollow one. Although the United Nations by its resolutions represents the force of world opinion it cannot compel any country to grant specific rights and privileges to individuals. That prerogative rests with the government of the country in which such individuals live.⁶⁹ As it was the UNO resolution proved ineffective to change Indo-European relations in the Union except perhaps to intensify anti-Indian attitudes.⁷⁰ South Africa defied the United Nations. Nehru and Smuts exchanged several letters,⁷¹ which Smuts found exasperating, for he wrote: '...Nehru is keeping bombarding me with his silly correspondence and mouthing his broken agreements and human rights.'⁷² Nothing more was done to give effect to the UN resolution.

65. J.C.Smuts, Jan Christian Smuts (Cape Town, Cassell and Company Ltd., 1952), 499.

66. J. van der Poel (Ed.), Selections from the Smuts Papers, Vol. VII, 129-130.

67. Walker, A History of Southern Africa, 762; see also, J.E.Spence, Republic under Pressure. A Study of South African Foreign Policy(London, Oxford University Press, 1965), 104.

68. M.Ballinger, From Union to Apartheid, 130.

69. M.Webb, 'World Opinion and South Africa', in South Africa Faces UNO (Johannesburg, SAIRR, 1947), 34.

70. G.M.Carter, 'The Discrimination Against Indians in South Africa, 189. For a short while Whites were boycotting Indian businesses particularly in the Transvaal.

71. For copies of the Smuts-Nehru Correspondence see, Treatment of Indians in the Union of South Africa: Report by the Government of India on the Resolution passed by the United Nations General Assembly on December 8, 1946(New York, South African Passive Resistance Council, 1947), Annexure, 9-14; Minute and Agenda Book, South African Indian Conference, 13-14.3.1948).

72. J. van der Poel(Ed.), Selections from the Smuts Papers, Vol. VII,

The Indian question was raised again at the United Nations General Assembly in 1947. This time the Indian question failed to get the necessary two-thirds majority. The effect of this was no more than a mild censure of the Union's racial discrimination. The problem remained; the interest waned. With other developments such as the Palestine issue becoming increasingly important, South Africa and India with Pakistan, both now independent, were urged to settle their differences at a round table conference.⁷³

Matters did not improve as time went on. South Africa virtually ignored the resolutions of the United Nations year after year. The 'Ghetto Act' remained on the Statute Book of South Africa until it was replaced by the more pernicious Group Areas Act in 1950 by the Nationalist Government which toppled Smuts in 1948. Indians in Durban had hoped to gain redress for their grievances by taking their case to the UNO. Mrs Pandit in her articulate, and no doubt emotional, speeches had focussed attention on the discriminatory legislation towards the non-Europeans in South Africa, all to no avail.

The Franco-Mexican resolution 44(1) was hailed as a victory for the Indian community by the N.I.C. But in the ultimate analysis the excitement proved synthetic for the United Nations was powerless to effect the abrogation of the Asiatic Land Tenure and Indian Representation Act against which the principal arguments of India had been based. Again, those in the Kajee-Pather mould saw the UNO resolution as of little value.⁷⁴ But practically every one of the radical group interviewed rejected the view that the UNO resolution was

73. G.M.Carter, The Politics of Inequality, 396; see also, White 'The Evolution of Policy, 1943-1948', 133, f/n. 11.

74. Interview with J.P.Gokool, Durban, 8.9.1983.

inefficacious or that their effort in bringing the issue to the United Nations was in vain. J.N.Singh, articulating the general consensus of the group, emphasises the exposure to world knowledge of the disabilities of the non-Whites and declares: 'We couldn't have had a better platform to ventilate our grievances than the United Nations.'⁷⁵ George Singh, too, feels that the debate on the Indian issue at the UNO in 1946 was the beginning of the consolidation of opinion by the world community against discriminatory legislation in South Africa to-day.⁷⁶

The 'Indian penetration' question led to the Indian community appealing to the United Nations. White indignation against the verdict of the United Nations General Assembly ensured that no concessions would be granted to the Indians in South Africa. Smuts remained intransigent, although he must have realised that the Afro-Asian bloc could no longer be considered as a negligible force in world affairs.

As for Indian politics the N.I.C. moved closer to the A.N.C. The A.N.C. saw in this alliance with the N.I.C. and through the support of India, international recognition of its struggle against discriminatory legislation. The Kajee-Pather Group capitalised on the N.I.C. - A.N.C. pact and the waning interest in the passive resistance campaign by forming the moderate Natal Indian Organisation on 4 May 1947. The Indian community once more split into two political camps: the accommodationists and those who were not prepared to collaborate with the Government in their oppression. The struggle went on and still continues.

75. Interview with J.N.Singh, Durban, 8.9.1983.

76. Interview with George Singh, Durban, 8.9.1983.

CHAPTER TENCONCLUSION

The analysis of the question of 'Indian penetration' in Durban and Indian politics, 1940-1946, reveals that by 1940 White prejudice against Indians was steadily growing. The antagonism of Whites towards the Indian community could be attributed chiefly to the improved economic and social condition of Indians. This antipathy increased when Indians demanded political rights, better housing and civic amenities and economic opportunities in keeping with their improved status. A few Indians acquired or occupied property in areas that were predominantly European because the quality of housing and services that they desired were only available in such areas. Whites immediately denounced such action as 'Indian penetration' and intensified anti-Indian agitation to prevent the acquisition and occupation of property in predominantly White areas by Indians. Whites in Durban demanded legislation to prevent Indians from purchasing or occupying such properties. The records clearly show that the D.C.C. was the prime instigator for such a move.

The Government at first rejected the demands for legislation and succeeded in persuading the D.C.C. to co-operate with the Indian community to prevent 'Indian penetration'. For this purpose the Lawrence Committee had been set up. Moreover the Government had appointed the Broome Commissions to investigate the claims made by Europeans in regard to 'Indian penetration'. The D.C.C. sabotaged the Lawrence Committee by continually demanding statutory powers for it.¹ Acting on the findings of the Second Broome Commission the Government passed the 'Pegging Act' in 1943 which temporarily pegged the transaction of property between Indians and Europeans until 31 March 1946.²

1. See above, Chapter Two, 77-78.

White prejudice in Durban once more wrecked Indian attempts at conciliation and co-operation when the Pretoria Agreement was mooted. Government showed its ambivalence towards the Indian community when the Agreement was abandoned.³ Forced by the White electorate Smuts had little choice but to promulgate the 'Ghetto Act'. This Act provided for compulsory segregation of the Indian community by placing restrictions on Indian acquisition and occupation of property in Natal for the first time in their history.⁴ Indians in South Africa demonstrated their abhorrence for such a piece of discriminatory legislation through a passive resistance campaign. They also appealed to India to expose the disabilities of the Indians in South Africa to the international community at the UNO. The Union Government adamantly refused to give effect to the resolution 44(1) passed by the General Assembly for South Africa and India to settle their differences at a round table conference.⁵

Since the Cape Town Agreement of 1927 the Indian community had slowly but surely improved their social and economic condition.⁶ As more and more Indians were receiving a higher standard of education they began seeking more lucrative means of employment in commerce and industry. As Ginwala points out there developed an articulate Indian bourgeoisie which claimed equality in all respects with Whites.⁷ Insofar as housing was concerned the areas predominantly occupied by Indians were characterised by some substantial homes surrounded by shacks. Civic amenities in these areas were sadly lacking.⁸ It was inevitable that Indians who

3. See above, Chapter Six, 241.

4. See above, Chapter Seven, 285.

5. See above, Chapter Nine, 336.

6. See, I.P.C. Report (UG 39/1941, 25.7.41), para. 330, 75; sse also, above, Chapter Three, 107, f/n. 119.

7. Ginwala, 'Class, Consciousness and Control', 432.

8. See, N.I.C. surveys, Chapter One, 34, f/n. 109.

could afford to do so and who wished to improve their quality of life would move from the neglected Indian areas to the European areas where such civic amenities and good quality houses were available. Furthermore as new suburbs developed Europeans abandoned the older, decaying areas to move into the newer suburbs. When Indians occupied such vacated areas they were merely following the trend of urban development called 'invasion-and-succession',⁹ prevalent throughout the world. This phenomenon in Durban however degenerated into a racial agitation against the Indians because of the prejudice of the White group.

As Professor Burrows points out the Indian community being youthful required housing on a large scale.¹⁰ But the D.C.C. had abdicated its responsibility. It had provided only fifty sub-economic and fifty economic houses at Cato Manor and fifty sub-economic houses at Springfield for the Indian community. The D.C.C. also refused to make available choice building sites for Indians who wished to build their own homes. The granting of housing loans by the D.C.C. to Indians was minimal. Indian applicants for the loans became discouraged because of the numerous difficulties placed in the way of Indian borrowers. It could be safely concluded that had the D.C.C. provided adequate housing for the Indian community as well as the necessary civic amenities in Indian areas, 'Indian penetration' would probably have been insignificant. Even as things were, Broome concluded that from 1 January 1927 to September 1941 there were only 512¹¹ cases of 'penetration' and so the situation was hardly one for concern.

9. See above, Chapter Three, 102-105.

10. Burrows, Indian Life and Labour in Natal, (1952), 5; see also above, Chapter One, 33, f/n. 101; 350-353, Appendix I, figures 2-5.

11. I.P.C. Report (UG39/1941, 25.7.41), para. 304, 68; see also above, Chapter Three, 99, f/n. 89.

The D.C.C. agitation against 'Indian penetration' derived from its obsession to segregate the Indian community. As early as 1922 through the Durban Land Alienation Ordinance, No.14 of 1922(Natal) the D.C.C. sought to restrict ownership or occupation of municipal property.¹² Its Cato Manor housing scheme for Indians was a good example of attempting to segregate Indians.¹³ It was made patently clear by the Indian community that they were opposed to the principle of segregation because it was a slur on their 'izzat'¹⁴ but they were not averse to living among their own people by choice.¹⁵ Despite this declaration by the Indian community the D.C.C. did not change its attitude to statutory segregation for Indians. The D.C.C. under the guise of providing housing for Indians attempted to segregate them by expropriating their property in Riverside, Sydenham and Merebank/Wentworth and to provide houses for Indians at Springfield and Merebank/Wentworth.¹⁶ The design of the D.C.C. had become obvious and the Indian community strongly opposed the attempts made by the Council to remove Indians from these settled areas.

The 'Pegging Act' in 1943 had placed Durban 'on its trial' to improve the housing conditions for Indians, but it did little to change the situation. When the N.I.C. attempted to annul the 'Pegging Act' by proposing the Pretoria Agreement which provided for a licensing board to control the residential juxtaposition of the Indians and Europeans in Durban, the D.C.C. in pursuing its policy of segregation objected vehemently to the proposal and pressed for the control of acquisition and occupation of all types of property.¹⁷ There is little doubt that the

12. See above, Chapter One, 20, f/n. 26.

13. See, Ibid., 27, f/n. 66.

14. see, Ibid., 21, f/n. 36.

15. I.P.C.Report(UG 39/1941, 25.7.41), para. 201, 44.

16. See above, Chapter Four, 149, f/n. 102.

17. See above, Chapter Six, 225.

the D.C.C. was in the vanguard of those who had dealt the final death blow to the Pretoria Agreement thereby forcing Smuts to promulgate the 'Ghetto Act' as segregatory legislation. The numerous attempts of the D.C.C. to segregate the Indians were a part of its overall pioneering programme of urban segregation¹⁸ and as such Durban laid the foundations for the Group Areas Act promulgated by the Nationalist Government in 1950.¹⁹

The 'Indian penetration' question also involved the study of Indian political development which was in essence nothing more than Indian reaction to anti-Indian legislation. From the Gandhian era in South Africa until 1945 Indian politics was of the moderate, accommodationist mould.²⁰ White supremacy was not challenged and Indian leaders were content to merely placate White prejudices.²¹ Indian politics lacked a cohesive unified approach and was complicated by personality clashes and communalism.²² The organisations split on issues which sometimes bordered on the ridiculous: the formation of the C.B. and S.I.A. was the result of the N.I.C. participation in the Young Commission of Enquiry in 1932 on colonisation;²³ Hindu leaders resigned from the N.I.C. because of the marriage of the Agent-General, Sir Raza Ali, a Moslem, to Miss Ponoo Veloo Sammy, a Hindu;²⁴ the N.I.C. - N.I.A. split apparently turned on a minor constitutional point and Kajee's pique at possible denial of a leadership role.²⁵ It is important to note however that during this period the leadership came mainly from merchants of passen-

18. See above, Chapter Four, 158, f/n. 139.

19. See, *Ibid.*, 158.

20. See, Pachai, 'Aliens in the Political Hierarchy', 2-3.

21. See above, Chapter Two, 50.

22. Calpin, *A.I.Kajee*, 122.

23. See above, Chapter Two, 52.

24. See, Pahad, 'The Development of Indian Political Movements', 220.

25. See above, Chapter Two, 56.

ger origin ²⁶ who were prepared to act independently of mass support and to take decisions after private deliberations with the 'caucus' following in the organisation.²⁷ Funds were obtained from the few wealthy members and the business premises of the main leadership were used as headquarters.²⁸

In 1939 when the N.I.C. and the C.B. and S.I.A. merged to form the N.I.A. the Moslem merchant leaders hived off under Kajee's leadership. They remained aloof from the N.I.A and continued the existence of the N.I.C., while Sorabjee Rustomjee and P.R.Pather became leaders of the N.I.A. But the leadership of both organisations remained characteristically money dominated.²⁹ Their conciliation and compromise tactics were primarily directed towards the protection of the vested interests of the commercial class ³⁰ by attempting to neutralise the decision of the authorities which adversely affected those interests.³¹ They submitted moderate petitions and memoranda and avoided any militant action which could possibly be construed as confrontation with the authorities. The moderate leadership avoided mass movements arguing that a militant approach would negate their efforts to improve the Indian community's status and position gradually.

26. Kuper, Indian People in Natal, 47.

27. Ibid., 50.

28. See, Calpin, A.I.Kajee, 66-72, for example, of how the N.I.C. was organised and run during Kajee's chairmanship.

29. Interview with Billy Peters, Durban, 8.9.1983.

30. See also, Pahad, 'The Development of Indian Political Movements', 222.

31. J.F.H.Purcell, 'Durban, South Africa: Local Politics in a Plural Society' (University of California, Unpublished Ph.D. thesis, 1974), 355.

As merchants and financiers the accommodationist leadership was concerned with property as an investment and were therefore willing to accept segregation that affected occupation but not acquisition for investment.³² Understandably the Kajee Assurance, the participation on the Lawrence Committee and the initiative taken to conclude the Pretoria Agreement seemed appropriate action undertaken in terms of such a policy by the accommodationist leadership.³³

By 1943, when the N.I.A. and N.I.C. merged into the N.I.C. (as established by Mahatma Gandhi in 1894), the moderate leadership was firmly ensconced in Indian politics. But they were ousted from power in 1945 by the radical element which changed the whole strategy of Indian politics. They introduced bolder and more imaginative methods of struggle and the N.I.C. became an organisation attuned to the mood and aspirations of a wider cross-section of the Indian community. The radical group succeeded in fostering a spirit of resistance amongst the Indians and demanded equal rights with the Europeans. This had made possible the passive resistance campaign of 1946 and having moved closer to the A.N.C. and other national liberation movements the N.I.C. participated in the mass struggles of the fifties and the sixties.

There were several factors which contributed to the radicalisation of the Indian community in Natal at this time. By 1945 the socio-economic condition of the Indians had improved considerably. As Indians improved their education they gravitated to the urban centres and sought employment in various spheres of economic activity: wood, metals, textiles, printing, vehicles, furniture and leather.³⁴ This urban

32. See also, Ginwala, 'Class, Consciousness and Control', 433.

33. See also, Pahad, 'The Development of Indian Political Movements', 222-223.

34. See, Burrows, Indian Life and Labour in Natal, (1952), 17-18; see also, Woods, The Indian Community of Natal, 6.

concentration and proletarianisation of the Indians stimulated the formation of trade unions and their sustenance, as well as the establishment of various associations and commercial activities.³⁵

The trade unions³⁶ with left-wing tendencies offered protection and power for collective bargaining. The success of the trade unions improved, the economic situation of the working-class in terms of better wages and working conditions. This encouraged the workers to participate in Indian politics on the side of the radicals.³⁷ The trade unionists became the backbone of the Anti-Segregation Council which controlled the N.I.C.³⁸ The radicals also had close ties with various religious, social, sporting and cultural associations.³⁹ These bodies served as a useful channel of communication and provided the opportunity of broadening the support for the radical element.

A significant development in Durban particularly was the contribution of the Indian community to the expansion of educational facilities for Indians so much so that by 1945 many Indians had qualified as teachers, lawyers and doctors who began to articulate and interpret the feelings of the Indian community more forcefully. Such individuals were held in high esteem by the community and their sacrifices were generally appreciated by Indians. Consequently the intellectuals in the Indian community were able to gain recruits for the radicals without much difficulty. Further the educated group combined with the trade unionists

35. See, Pahad, 'The Development of Indian Political Movements', 235; see also, Kuper, Indian People in Natal, 48.

36. For more details of the Trade Unions in Natal see, H.G. Ringrose, Trade Unions in Natal (Cape Town, Oxford University Press, Natal Regional Survey, Vol.4, 1951); see also, Burrows, Indian Life and Labour in Natal, (1952), 21-22.

37. Interview with George Singh, Durban, 8.9.1983.

38. See, Pahad, 'The Development of Indian Political Movements', 240.

39. See, Kuper, Indian People in Natal, 74-94.

and some of the sympathetic traders to provide for the first time a more or less united N.I.C. representing the different strata of the Indian population. Added to this was the fact that many of the members of the South African Communist Party were also leading members of the trade unions and the political organisations. The Communist Party assisted greatly in organising the non-White workers and radicalising the non-European political organisations.⁴⁰

The 'Indian penetration' question in Durban had been exaggerated out of all proportion by Whites. While the record of the D.C.C. was bad⁴¹ that of the Dominion Party was worse. The Dominion Party ostensibly stood for Imperial links as opposed to republican independence. In reality it proved that it 'stood for white power first, and Commonwealth solidarity only if that was compatible with white power.'⁴² The Dominion Party which was making no progress in the 1940s because it had no real raison d'être⁴³ therefore 'deliberately seized upon the growing agitation against Indians as a new cause upon which they sustained themselves in popular esteem.'⁴⁴

40. For more details see, Pahad, 'The Development of Indian Political Movements', 243.

41. K.C.M.3638(42)(G.Heaton-Nicholls Papers), Clarkson- Heaton-Nicholls, 21.11.1945.

42. D.Denoon, Southern Africa since 1800 (London, Longman, 1972), 153.

43. Krüger, The Making of a Nation, 215.

44. Calpin, A.I.Kajee, 120; see also, Macdonald, Jan Hofmeyr: Heir to Smuts, 74; A.Keppel-Jones, When Smuts Goes: A History of South Africa from 1952-2010. First Published in 2015 (Pietermaritzburg, Shuter and Shooter, 1949), 10.

As for Smuts his prestige lay mainly outside his own country.⁴⁵ After the general elections of 1943 he was at the height of his power and at the end of the war his standing abroad was immense with no other Commonwealth statesman, outside of Britain having reached such heights.⁴⁶ By 1946 the position had changed and his international reputation had been seriously tarnished because of the colour question generally and his handling of the Indian question in South Africa in particular. As a practical politician he had to rely upon his English-speaking supporters especially in Durban. They prevented him 'from going as far as his natural flair for statesmanship would have let him.'⁴⁷

He failed as a political leader to use his party as an instrument of social change. He was quite content to head a party which had as fixed policy the maintenance of White supremacy in South Africa.⁴⁸ As such he followed rather than led public opinion. Perhaps his survival depended on this. It was a characteristic feature of South African White politics that if any politician 'made serious attempts to take account of non-white feeling, he would commit political suicide.'⁴⁹ In Natal especially, on the other hand, an anti-Asiatic manifesto was most certain to bring success to candidates standing for election to the Durban City Council or the Provincial Council or Parliament. Smuts's failure to face the colour question squarely proved his nemesis at UNO

45. A.G.Barlow, Almost in Confidence (Cape Town, Juta and Co.,Ltd., 1952), 334.

46. Friedman, Smuts: A Reappraisal, 157.

47. E.H.Brookes, South Africa in a Changing World (Cape Town, Oxford University Press, 1953), 90; see also, Khan, The Indian in South Africa, 62; R.Lacour-Gayet, A History of South Africa (London, Cassell and Company Ltd., 1977), 293.

48. Seeing is Believing - Here is the Truth About South Africa (New York, Council on African Affairs, Inc., 1947), 2.

49. B.Pillay, British Indians in the Transvaal: Trade, Politics and Imperial Relations, 1885-1906 (London, Longman, 1976), 215; see also, P.S. Joshi, Apartheid in South Africa: A Plea for Human Rights for Non-European People (Kimberley, Author, 1950), 39.

and his final collapse came two years later when the Nationalists defeated him at the polls.

Huttenback rightly comments: '...the history of the Indian community in South Africa is at least in part a case study in moral bankruptcy...' ⁵⁰ Durban had become the eye of the racial storm which enveloped the whole of South Africa. As Joshi bluntly states: 'Durban stood an unrepentant city of humiliation for the Indian community, and a dark blot on the British Empire.' ⁵¹ Durban had first invited Indians ⁵² and then later instigated agitation to get rid of them. It was Durban that started the cry of 'Indian penetration' and demanded legislation to segregate the Indians. Finally it was Durban that forced Smuts to pass the 'Ghetto Act' in the teeth of opposition from the Indian community and incredible indifference to international repercussions.

The agitation against 'Indian penetration' in the Durban area during 1940-1946 was both a racial and class struggle between Indians and Europeans. The latter possessing the vote wished to perpetuate their dominance politically and economically by denying the Indian community every opportunity to achieve lebensraum in the country of their

50. R.A.Huttenback, Gandhi in South Africa: British Imperialism and the Indian Question, 1860-1914 (Ithaca, Cornell University Press, 1971), 333; see also, A.Keppel-Jones, Friends or Foes? A Point of View and a Programme for Racial Harmony in South Africa (Pietermaritzburg, Shuter and Shooter, n.d.), 66.

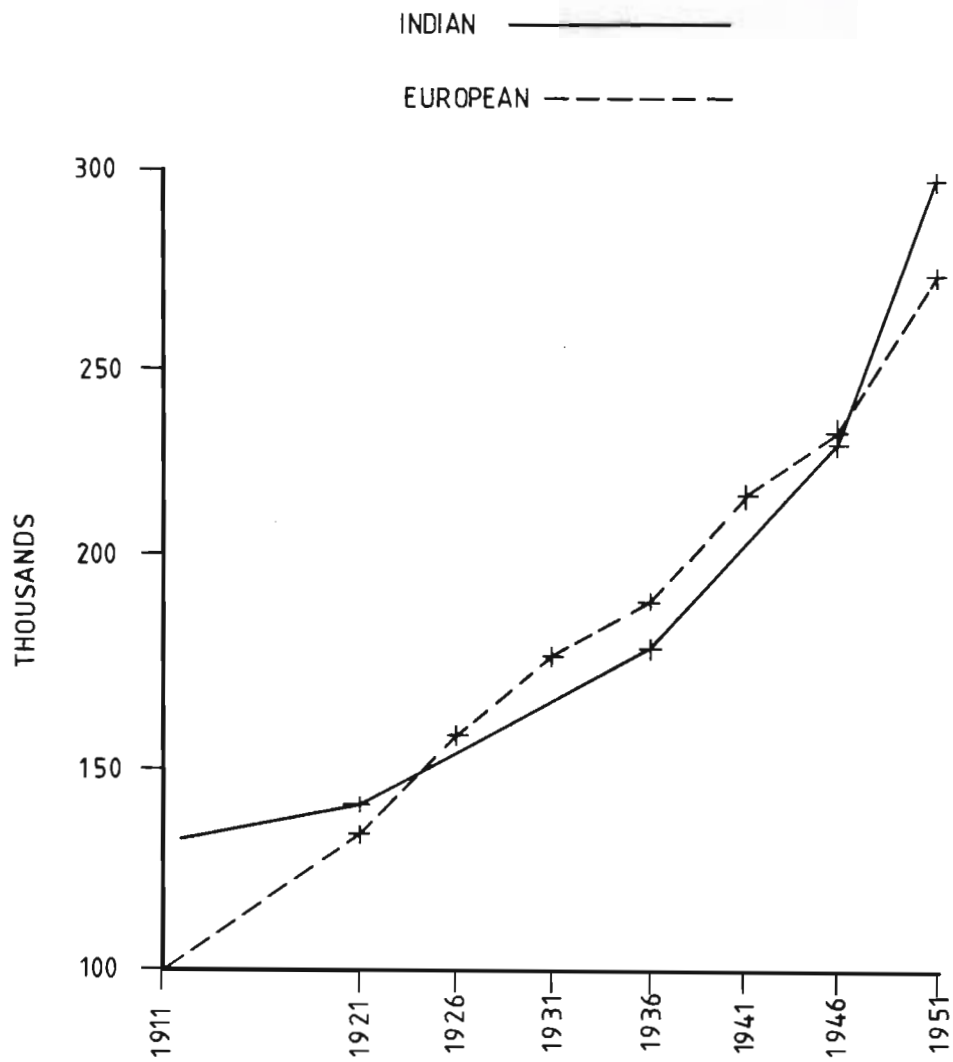
51. Joshi, The Struggle for Equality, 18.

52. In 1855 the Corporation of Durban prepared a long address, ratified by burgesses, requesting the introduction of labourers from the East, to Sir George Grey, Governor of the Cape Colony and High Commissioner over British Territories in South Africa; see, Thompson, Indian Immigration into Natal, 1860-1872, 9; C.J. Ferguson-Davie, The Early History of Indians in Natal (Johannesburg, SAIRR, Reprint, 1977), 5.

birth. Without the franchise and representation in Parliament Indians were gravely handicapped: they lacked the normal democratic instruments for political bargaining. They could but rely on appeals, protests and mass meetings to demonstrate to the White electorate the burning sense of privation and social injustice they suffered. Yet Indians hoped that the idealism enshrined in the Atlantic Charter and the Charter of the UNO would permeate South African life. That hope still exists to-day.

1911-1951

NATAL INDIAN POPULATION GROWTH



<u>YEAR</u>	<u>INDIANS</u>	<u>EUROPEANS</u>
1911	133 417	98 114
1921	141 649	136 838
1926	—	158 916
1931	—	177 499
1936	183 661	190 549
1941	—	218 139
1946	232 317	236 697
1951	298 206	270 697

FIG. 1

Source: Burrows,

Indian Life and Labour in Natal, (1952), 3.

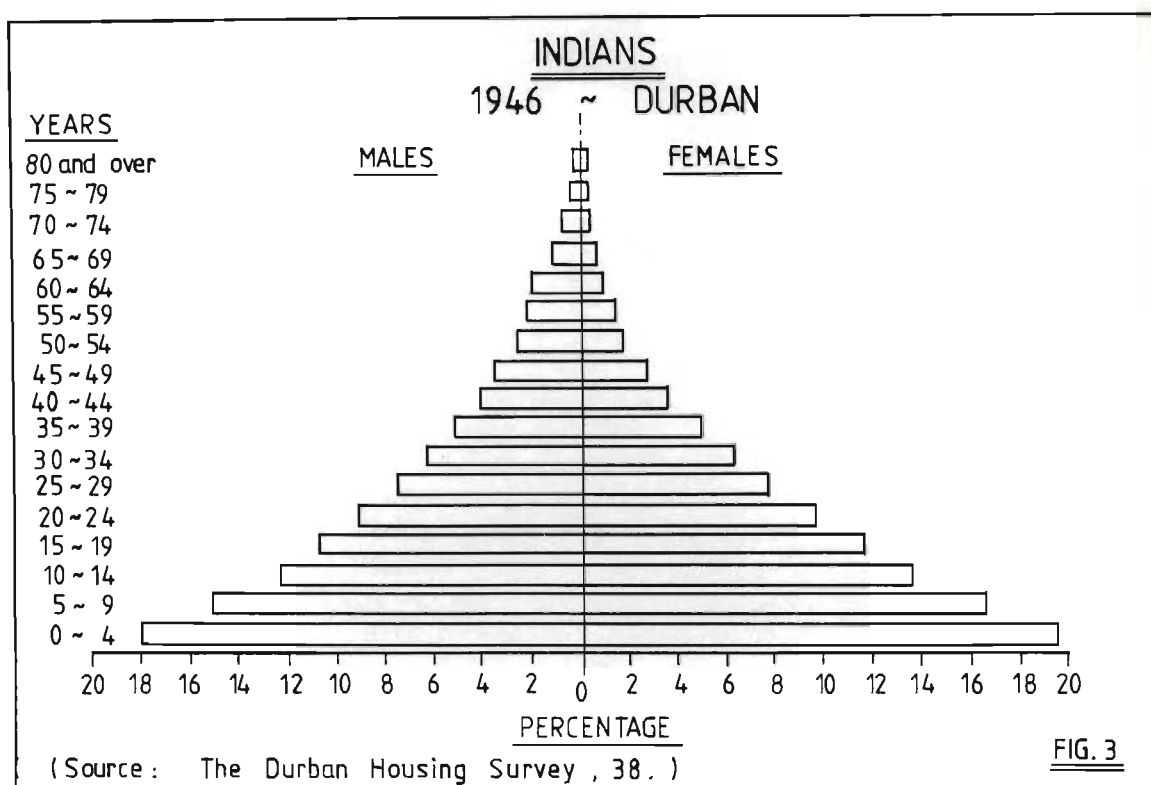
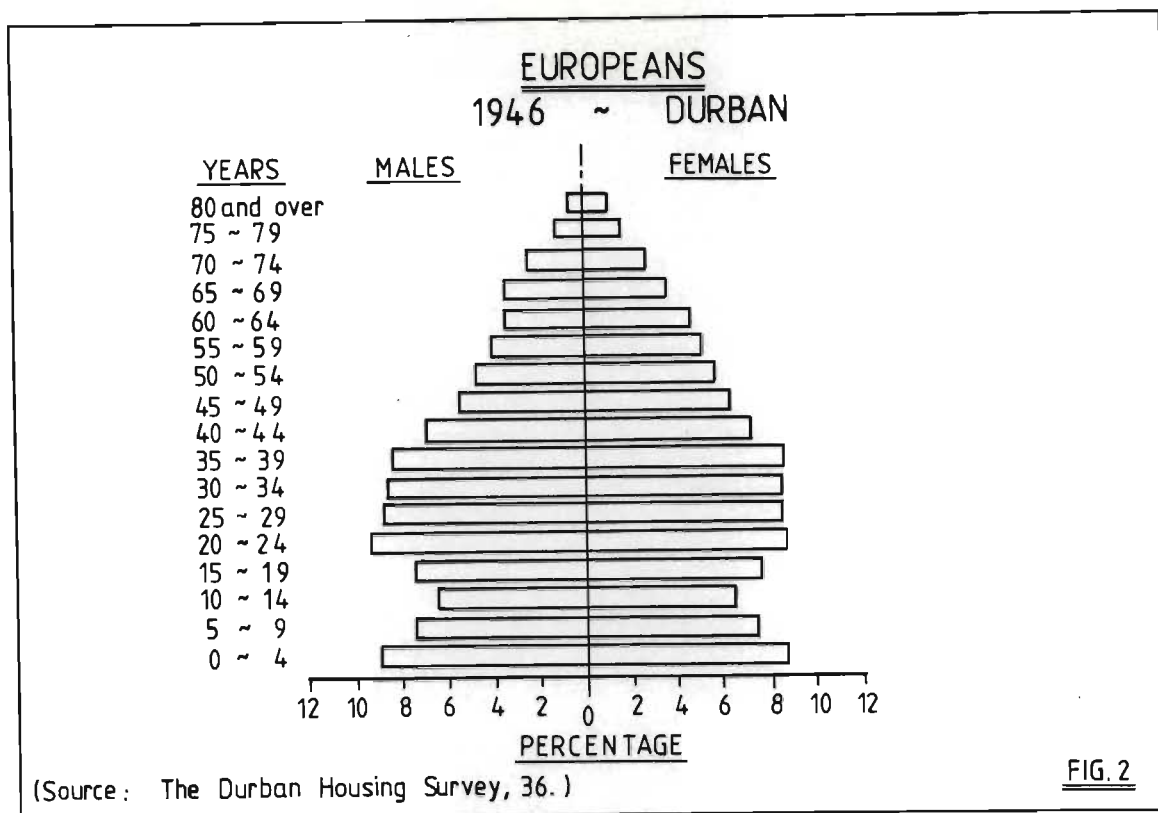


FIG. 4

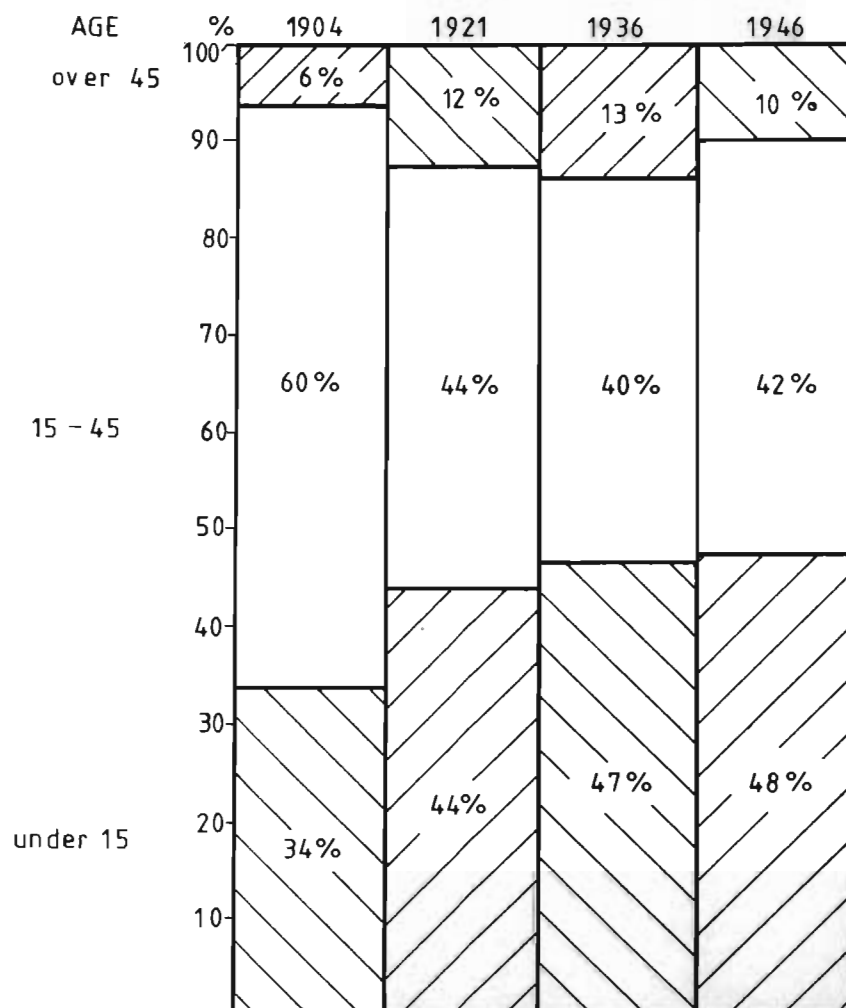
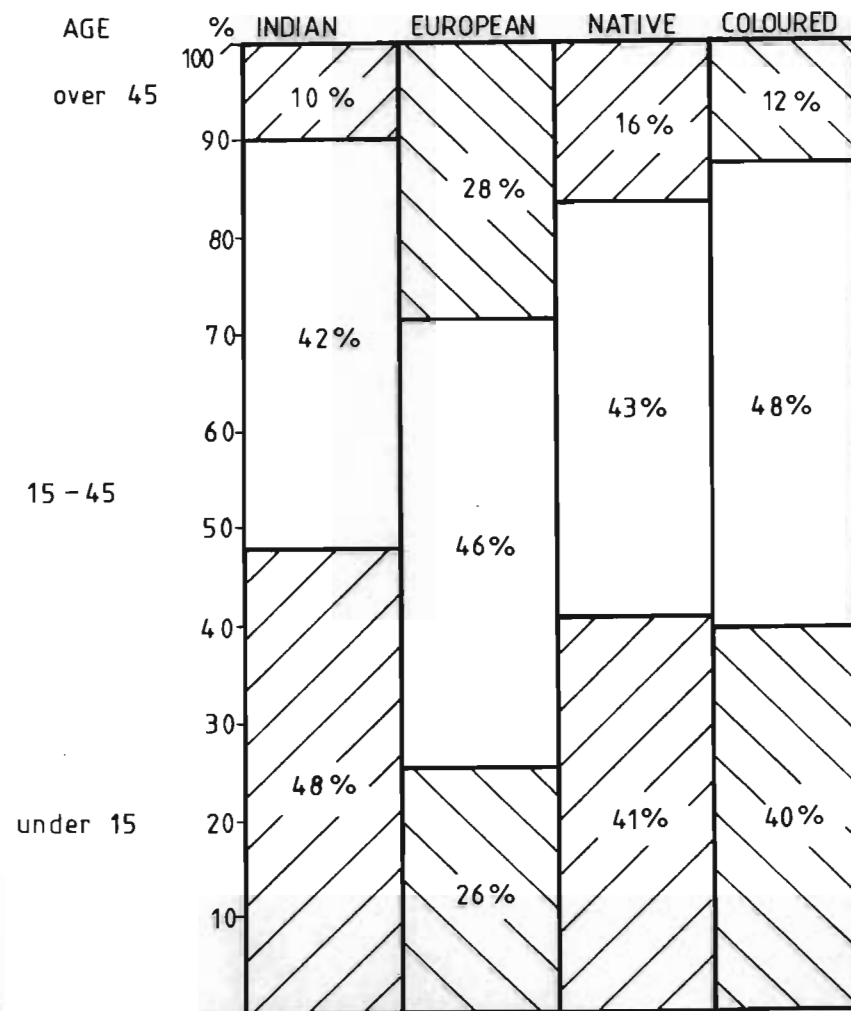
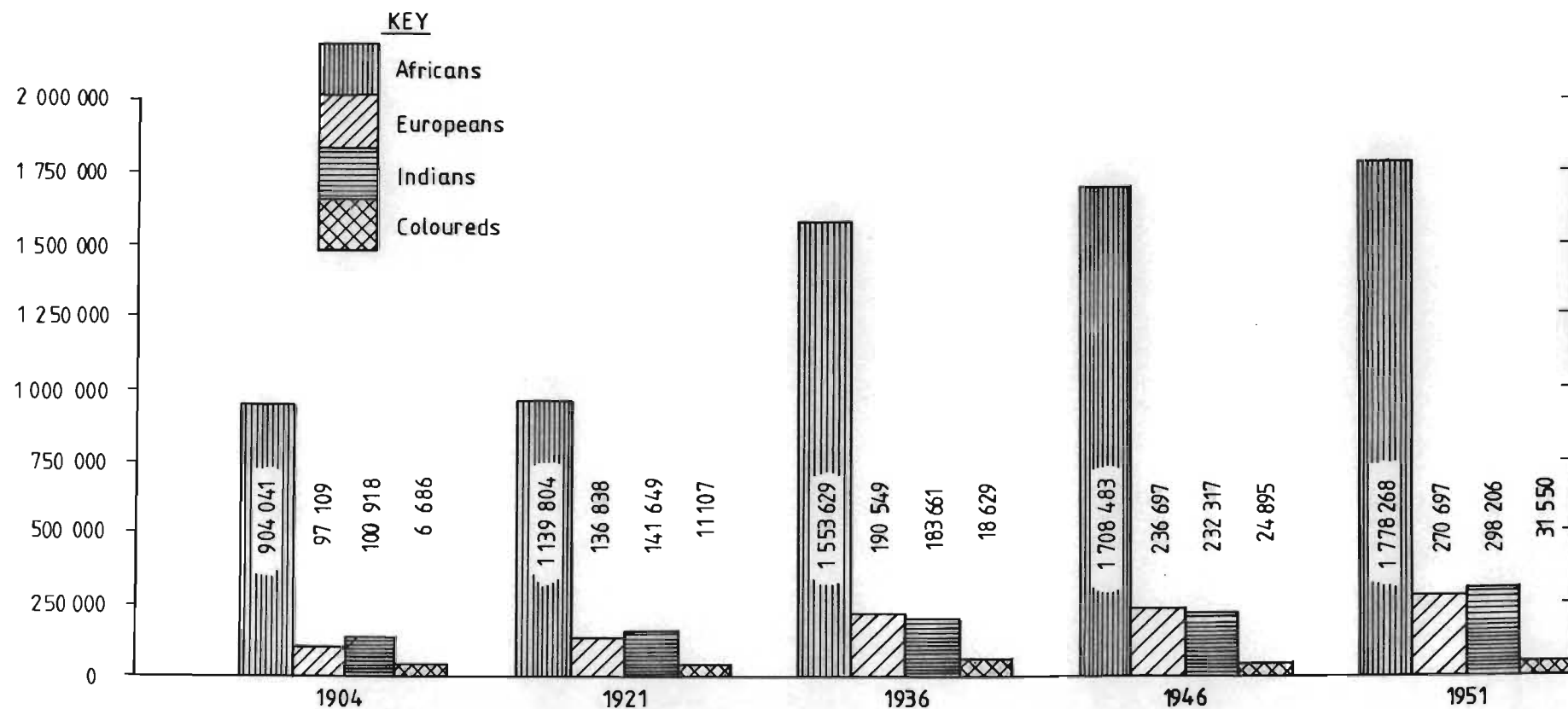
NATAL INDIAN POPULATION
CHANGE IN AGE-COMPOSITION

FIG. 5

AGE STRUCTURE OF DIFFERENT
RACES IN NATAL 1946Source: Burrows, Indian Life and Labour in Natal, (1952), 6-7.

NATAL POPULATION STRUCTURE

FIG. 6



Source: Burrows, Indian Life and Labour in Natal, (1952), 4-5.

APPENDIX IIPRESS NOTICE ISSUED BY THE PRIME MINISTER ON THE18TH. APRIL, 1944.

The Right Honourable the Prime Minister and the Honourable the Minister of the Interior met His Honour the Administrator of Natal, Mr.D.E.Mitchel, [sic] M.E.C., Senator D.G.Shepstone and the following representatives of the Natal Indian Congress, viz., Messrs A.I.Kajee, P.R.Pather, S.R.Naidoo, A.B.Moosa, T.N.Bhoola, Mahomed Ebrahim and S.M.Paruk, in connection with matters arising out of the application of the Pegging Act in Natal. The discussion took place as the result of representations made by the Indian Congress to find an alternative method of controlling the occupation of dwellings in towns and boroughs of Natal to that adopted under the Act mentioned. It was agreed that the situation would best be met by the introduction of an Ordinance into the Natal Provincial Council. This Ordinance would provide for the creation of a Board consisting of two European and two Indian members under the Chairmanship of a third European who will be a man with legal training. The object of the legislation will be to create machinery for the Board to control occupation by the licensing of dwellings in certain areas. The application of the Pegging Act in Durban to be withdrawn by Proclamation on the passing of this Ordinance.

.....

**A.S.C. PROGRAMME
of Demands for the Indian People.**

1. Adult Franchise, i.e., the right of every man and woman over 21 to elect and be elected to Parliament and Provincial and Municipal Councils.
2. Free and compulsory education up to and including J.C.
3. Unrestricted trading rights.
4. Equitable distribution of fertile land to market gardeners and small farmers.
5. State subsidies to gardeners and small farmers.
6. Adequate housing and civic amenities.
7. The removal of all anti-Indian legislation.
8. The removal of the colour bar from all spheres of life.
9. A policy of no compromise on the part of the Natal and the South African Indian Congress.
10. Implementation by the Natal and the South African Indian Congress of the Non-European Unity Resolution adopted by the South African Indian Congress in 1943.

THE ANTI-SEGREGATION COUNCIL is pledged to reorganise Congress and to reconstitute it on a sound basis. Such a constitution must give to the ordinary member as much authority as is possible.

IT IS FUNDAMENTAL THAT THIS CONSTITUTION SHOULD PROVIDE FOR A TRUE REFLECTION OF POPULAR OPINION IN THE WORKING COMMITTEE.

The draft of the Kajee-Pather group fails to do this. It further fails to provide the general membership with any remedy should the officials or Working Committee fail to carry out their duties or to convene a Federal Assembly.

The new constitution must provide for all contingencies. It must be a peoples constitution.

The Anti-Segregation Council reaffirms its pledge to draw up this constitution. We further pledge ourselves to submit such a constitution to a Special General Meeting within three months of the elections. Within six months a Provincial Conference will be held and new officials chosen by delegates from all parts of Natal.





Dr. G. M. Naicker,
CHAIRMAN.

Debi Singh,
SECRETARY.



**AFFILIATED
ORGANISATIONS.**

National Baking Industrial Union
(Durban Branch).

Durban Indian Municipal Employees'
Society.

Natal Sugar Industry Employees'
Union.

Tea, Coffee & Chicory Industry
Employees' Union.

National Union of Distributive
Workers (Durban B. Branch).

S.A. Tin Workers' Union.

Box Workers' Union.

Laundry Workers' Union
(Durban Branch).

Rope & Mat Workers' Union.

Chemical Workers' Union (Natal).

Twine & Bag Workers' Union.

Tobacco Workers' Union.

Paint, Polish & Varnish Workers'
Union.

S.A.R. & H. Workers' Union
(Non-European).

Sweet Workers' Union
(Durban Branch).

Brick & Tile Workers' Union.

Natal Food & Canning Workers'
Union.

Mineral Water Workers' Union.

Scap & Candle Workers' Union
(Durban Branch).

Maritzburg Municipal Employees'
Union.

Natal Sugar Field Workers' Union.

Natal Dairy Workers' Union.

Durban Non-European Bus Workers'
Union.

Communist Party of S.A.
(Durban District).

India League of S. Africa.

Natal Biscuit Workers' Club.

Liberal Study Group.

St. Aidan's Club.

Overport Social Club.

Springfield Farmers' Association.

Hindustan Youth Club.

TOTAL MEMBERSHIP
25,231.



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